THE Freeman

IDEAS ON LIBERTY

JULY 1964

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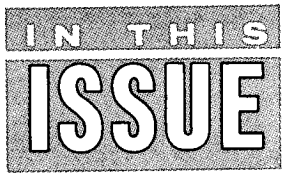

When an outstanding authority on labor policy as well as antitrust legislation covers both topics in one article, it runs long; but we thought you'd want it in one piece rather than serialized ..... p. 3

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COMPETITION, UNIONS & ANTITRUST

SYLVESTER PETRO

FEW THINGS seem more apparent than the existence of conflict between much of the conduct of American trade unions and the policies of the American antitrust laws. Yet it does not follow, even if one admits the apparent conflict, that the antitrust laws ought necessarily to be extended to cover trade-union conduct as pervasively as they govern the conduct of businessmen.

A variety of positions may be taken on the issue. Some may offer a confession and avoidance: yes, union conduct often conflicts with antitrust policy; but a superior imperative, premised on inequality of bargaining power between workers and their employers, dictates that worker organizations be permitted to engage in types of conduct which the antitrust laws would proscribe, as a means of securing an otherwise unattainable fair share of the production to which workers contribute. Others, equally accepting the fact of conflict, may insist that the relevant imperative is the rule of law. These would contend that if the antitrust laws are properly based on the public interest, it is nonsensical, even from

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the point of view of workers, since they compose so large a segment of the public, to limit the application of those laws; for the ensuing harm must be to the very public interest in which workers critically share. Still others, equally committed to the rule of law, might conclude that the antitrust laws rather than the trade-union conduct which those laws would proscribe, are contrary to the public interest; and accordingly propose repeal of the antitrust laws rather than extension of those laws to trade-union conduct.

Among those who would take a relatively uncomplicated position on the issue, there might be some, finally, who would consider it desirable to extend every conceivable kind of regulation, whether called an antitrust law or not, to the conduct of businessmen, while at the same time insisting that there is very little to gain and very much to lose in regulating any kind of trade-union conduct at all; for persons of this type there can be no conflict between trade-union conduct and antitrust, or any other prescriptive legal policy. Their view, one surmises (for it is never made explicit), is simply that businessmen can do no right and unions can do no wrong.

More complex positions have been developed. There have been proposals in and out of Congress to apply the antitrust laws to selected unions or to certain narrowly defined types of trade-union action while explicitly releasing other unions and other kinds of union action from antitrust liability. The idea that unions should be reduced by law or administrative discretion to smaller units has also been circulating for a long time. Finally, some have even argued that fundamental antitrust policy will be served better by governing union conduct through labor relations statutes such as the Taft-Hartley Act than under the odd combination of very general and very specific statutes lumped together under the heading, "antitrust laws."

My purpose in this paper is mainly to clarify thinking on the merits of the foregoing positions. Pursuing this objective, I intend first to measure trade-union action against antitrust policy, in order to determine whether the apparent conflict between them does in fact exist. I intend thereafter to evaluate antitrust policy itself. The third section of this paper will offer a critique of the more significant proposals that are circulating today with respect to unions and antitrust policy, and draw attention to the basic question: Do we want a free competitive enterprise system?

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PART I

Antitrust Policy & Trade Union Action

THE PROFESSED IDEAL of antitrust policy is a competitive economic order.[1] Promoting and maintaining such an economic order, it is felt, will bring about the material conditions which everybody wants — prices as low as possible, quality as high as possible, allocation of resources in accordance with consumer wishes, in short, continuing economic progress. It will also contribute substantially to the achievement of one of the most highly prized noneconomic objectives of the free society, that is, opportunity for each individual to realize his potentialities to the utmost degree, consistent with the public interest.[2]

The antitrust method of promoting a competitive economic order has called for governmental intervention into many phases of peaceful and consensual economic activity. Such intervention occurred even under the original and the most general of the antitrust statutes, the Sherman Act of 1890;[3] and it has gone much further under succeeding antitrust statutes, most notably the Clayton Act of 1914[4] and the Robinson-Patman Act of 1936.[5]

Owners of separate businesses were told under the original Sherman Act that they could not voluntarily join together in programs which would in all probability lead to their charging uniform prices for their respective products.[6]

[1] While a number of other statutes are normally included among the antitrust laws, I am thinking in this article mainly of the Sherman Act, 26 Stat. 209 (1890); the Clayton Act, 38 Stat. 730 (1914) as amended by 64 Stat. 1125 (1950); and the Robinson-Patman Act, 49 Stat. 1526 (1936).

[2] Almost any of the historic antitrust decisions will be found to contain remarks about the objectives of antitrust policy more or less similar to those in the text. See, e.g., *Northern Securities Co.* v. *U.S.*, 193 U.S. 197 (1904) (the opinion of Justice Holmes, dissenting, challenges the idea that the Sherman Act was designed to establish a charter of free competition, but this is one of the opinions of the "great dissenter" which people have tended to overlook). For other, more recent, comments on the objectives of antitrust policy, see *Associated Press* v. *U.S.*, 326 U.S. 1 (1945); *U.S.* v. *Paramount Pictures*, 334 U.S. 131 (1948); and *Lorain Journal Co.* v. *U.S.*, 342 U.S. 143 (1951).

[3] *Supra* note 1.

[4] *Idem.*

[5] *Idem.*

[6] *U.S.* v. *Joint-Traffic Assn.*, 171 U.S. 505 (1898); *Standard Sanitary Mfg. Co.* v. *U.S.*, 226 U.S. 20 (1912); *American Column & Lumber Co.* v. *U.S.*, 257 U.S. 377 (1921).

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More recently, but still under the original Sherman Act, businessmen have been found guilty of unlawful price-fixing combinations despite the absence of proof of definitely concerted action, under the theory of guilt sometimes referred to as "conscious parallelism."[7] The Supreme Court of the United States has gone so far as to say in some cases that businessmen violate the Sherman Act, regardless of the outcome of their efforts, whenever they concertedly "tamper with price structures."[8]

Other Business Practices Forbidden

Antitrust prohibition of peaceful, consensual activity has by no means been confined to the so-called "price-fixing" cases. Both horizontal and vertical integration of business firms has been prohibited under the Sherman and Clayton Acts, and it has not made any difference in these cases that the owners of the businesses involved might have been anxious to effectuate the prohibited merger, consolidation, or other form of integration.[9] The disinterested observer may have some difficulty in understanding why some integrations are prohibited while others are permitted,[10] but there can be no doubt that in the large number which have been prohibited it has not made any difference that they were voluntarily and even avidly sought by the parties involved.

Besides prohibiting such consensual, contractual arrangements, the antitrust laws have provided the basis for prosecuting aggressive business activity – the kind of conduct which, though nonviolent and nonfraudulent, is commonly called "predatory." Here, too, the basic idea was originally developed under the Sherman Act and then made more conscious and specific in the Clayton Act of 1914 and the Robinson-Patman Act of 1936.

The classic example has always been thought to be the old *Standard Oil* case,[11] where the defendant "trust" was accused and found guilty of hounding competitors out of business, engaging in fierce price wars, insisting upon favorable treatment from railroads, and so on. In more recent times, especially under the Clayton Act and the Robinson-Patman Act, business firms have found that even

[7] The leading case is probably *Interstate Circuit, Inc.* v. *U.S.*, 306 U.S. 298 (1939).

[8] *U.S.* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). See especially the famous footnote number 59, *ibid.* at 224.

[9] E.g., *Northern Securities Co.* v. *U.S.*, 193 U.S. 197 (1904) ("horizontal" integration); *U.S.* v. *Reading Co.*, 253 U.S. 26 (1920) ("vertical").

[10] E.g., *U.S.* v. *U.S. Steel Corp.*, 251 U.S. 417 (1920).

[11] *Standard Oil Co. of N.J.* v. *U.S.*, 221 U.S. 1 (1911).

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such mild conduct as exclusive purchasing arrangements[12] and price discrimination (i. e., variation) among their customers[13] may place them among the ranks of the lawbreakers.

Penalties of Success

The antitrust mode of preserving a competitive economic order is perhaps most characteristically illustrated by the decisions which at least *seem* to find illegality in natural and even blameless conduct – when it is the conduct of an outstandingly successful firm. Consider, for example, the *Schine* case,[14] where the Supreme Court held it unlawful for the owner of a chain of movie theaters to insist upon first-run exhibition rights from film distributors in towns where there were competing theaters as a condition to leasing films from those distributors at all in towns where there were no competing theaters.

One may understand how the Supreme Court arrived at the decision: the defendant was pursuing its own interest vigorously; although there was no evidence of a malicious intention to destroy the competition, a logical outcome of the defendant's course of action – *if it could have been carried out with persistent success* – would have been additional advantage in the form of greater returns on investment over the less successful competitors. But understanding the decision is one thing, and approving it as an intelligible implementation of a policy ostensibly in favor of free competition is another. For the moment, we merely cite the case as an example of the antitrust laws as they are characteristically applied.

Or consider the relatively recent prosecution of the United Shoe Machinery Company.[15] There, with the subsequent per curiam approval of the Supreme Court,[16] Federal District Judge Wyzanski held that the defendant's practice of leasing its machinery rather than selling it outright violated the Sherman Act.[17]

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[12] *Standard Oil Co. of California* v. *U.S.* 337 U.S. 293 (1949).

[13] *Federal Trade Commission* v. *A.E. Staley Mfg. Co.*, 324 U.S. 746 (1945).

[14] *Schine Chain Theaters* v. *U.S.*, 334 U.S. 110 (1948).

[15] *U.S.* v. *United Shoe Machinery Co.*, 110 F. Supp. 295 (D.C. Mass. 1953).

[16] 347 U.S. 521 (1954).

[17] Referring to the leases at one point in his opinion, Judge Wyzanski said they "have not been predatory, immoral, nor, on their face, discriminatory as between different customers," but still, he went on, "they have operated as barriers to competition." 110 F. Supp. 295, 297. What he meant was that they offered the customers a better deal than they could get elsewhere. For further discussion of the leases by the judge, including the statement that the customers seemed eminently satisfied with United's leases and other services, see *ibid.* at 340.

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There was nothing immoral, nothing dishonorable, not even anything which a scrupulously decent person might be ashamed of in United Shoe's leases. Indeed, Judge Wyzanski warmly praised the defendant's management for its "clean" record.[18] Nevertheless, the judge felt constrained to find that the leasing practices – being those of a firm which accounted for some 75 per cent of the production of shoe machinery in the United States – were unlawful.

Careful reading and rereading of the opinion leaves one with the firm conviction that precisely the same leasing practices would be regarded as perfectly lawful if adopted by any but a firm so "dominant" in its industry. In short, United Shoe's success precluded it from using exactly the kind of arrangement with customers that other firms use with impunity.[19]

Size Makes the Difference

The burden of such cases as *United Shoe* and *Schine* seems to be that successful businesses, especially if they are relatively "large" businesses, may not strive for competitive advantage against smaller and less successful firms in the same line of business.[20] It would not be accurate to say that the right to compete is entirely denied them. But it would be at least equally inaccurate to say that the full range of competitive methods remains available to them. Many types of conduct which are neither violent, nor fraudulent, nor in any other sense *malum in se* are quite plainly withdrawn from their use. It goes without saying that any firm which set out upon a course of conduct deliberately designed to eliminate competitors, even though by peaceful and honest means, would be found guilty of violating one or another, and quite possibly *all*, of the antitrust laws.

Monopoly Aims of Unions

The purpose of the large trade unions of the United States, as their leaders put it, is to bring the

[18] *Ibid.* at 345.

[19] See, for example, Judge Wyzanski's recognition that "the law allows many enterprises to use such practices." *Ibid.* at 345.

[20] According to Judge Wyzanski, the vice of the United leases lay in the difficulties they created for less well-established competitors. For example, the judge said: "To combat United's market control [i.e., great appeal to its customers?], a competitor must be prepared with knowledge of shoemaking, engineering skill, capacity to invent around patents, and financial resources sufficient to bear the expense of long developmental and experimental processes. The competitor must be prepared for consumers' resistance founded on their long-term, satisfactory relations with United, and on the cost to them of surrendering United's leases." *Ibid.* at 344.

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benefits of collective bargaining to all workers, or at least to as many as they can. It is probably more accurate, possibly less question-begging, and certainly more realistic to say that the purpose of each of the national and international unions is to secure a monopoly of the working force in the industries or fractions of industries in which they claim "jurisdiction"—the auto workers in the auto industry, the teamsters in the trucking industry, the carpenters in the appropriate branch of the construction industry, and so on.

Perforce, then, the objective of the large unions is to eliminate competition. There is no other meaning to the deliberate pursuit of a monopoly of any given type of goods or services.

The monopoly is sought, not as an end in itself, but because of the results which it is expected to bring about. Here, too, there is no mystery. The labor monopoly is sought as a means of gaining what economists call a monopoly price—i.e., something more than the competitive or the "free-market" price for labor.

I intend no ethical, moral, or legal evaluation here. I simply observe that which should be evident to all. American trade unions are frankly disinclined to rest content with competitive prices for labor. The Keynesian-Marxian thesis that competitive labor markets will necessarily return to workers less than their contribution to production—and thus lead to depressions — is the dominant belief of trade union leaders. It is also, incidentally, the rationale of the National Labor Relations Act, as any reader may see for himself by consulting the statement of policy of that legislation.

Documenting the foregoing generalizations is a matter merely of recounting what unions do in the two main branches of their activity: organizing employees and collective bargaining.

Elimination of Competition

A pervasive preoccupation, to repeat, whether in organizing or in collective bargaining, is with eliminating competition. The competition which unions seek to eliminate is the competition implicit in alternative methods of doing the work over which the unions claim or seek jurisdiction.

I do not wish to be understood as saying that unions are now successful, or that they will ever be successful, in gaining their end. Discussion further on in this paper will disclose the significance of this disclaimer. At present it is necessary only to emphasize that our concern is with the objectives of and the means used by the large

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unions, not with their ultimate prospects.

A material proportion of current litigation of labor disputes, as of the historic labor cases, grows out of attempts by unions to extend their organizations. Of course, a mere desire on the part of any group of men to extend their activity does not in and of itself run afoul of antitrust policy —not even current policy, let alone the somewhat more lenient policy which has prevailed at times in the past.

But when an organization which has achieved notable size manifests an obvious intention to keep on expanding, and when, moreover, its expansionism takes the form of aggressive conduct toward its competitors (whether those competitors are isolated individuals or associations) — then a violation of the antitrust laws is held to exist. This is the burden of the development which has occurred from the old *Standard Oil*[21] and *American Tobacco Company*[22] cases through the more recent *American Tobacco*,[23] *Schine*,[24] and *United Shoe* cases.[25] The crime of monopolizing, as it is often said, inheres in "the power to exclude coupled with the intent to exclude.[26]

Every time a union sets up a picket line, its aim is to exclude competition. And the means of accomplishing that end involve at least as severe pressure or duress as has earned for competitive business practices the description "predatory."

Consider picketing in large numbers. When hundreds or perhaps thousands of men parade before a business establishment, their intention is to frighten people; and it is self-evident that all, even the boldest of us, must feel qualms upon entering a place — whether as workers, customers, or suppliers — when so many persons make it plain that they intensely wish that we would not do so. If the picketing is in such masses that penetration would actually involve physical contact, the case is even clearer. If there has been some violence associated with the picketing, the case is clearest of all.

Picketing in large numbers, especially with violence, is designed to exclude competition of various

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[21] 221 U.S. 1 (1911).

[22] *U.S.* v. *American Tobacco Co.*, 221 U.S. 106 (1911).

[23] *American Tobacco Co.* v. *U.S.*, 328 U.S. 781 (1946).

[24] 334 U.S. 110 (1948).

[25] *Supra*, note 15.

[26] "Neither proof of exertion of the power to exclude nor proof of actual exclusion of existing or potential competitors is essential to sustain a charge of monopolization under the Sherman Act." *American Tobacco Co.* v. *United States*, 328 U.S. 781, 810 (1946).

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kinds, and in various ways. If associated with a strike against the picketed employer, its purpose is to shut off the employer's access to competitive methods of keeping the establishment in operation, or of restoring it to operation. The pickets seek to discourage nonstriking employees from continuing to work, or striker-replacements from taking jobs vacated by the strikers, or customers and suppliers from continuing their dealings with the employer.

Violation of Antitrust Policy

There has been some tendency to dismiss these violent or intimidatory methods of excluding competition as "not the kind of thing that the antitrust laws were aimed at." That may be. But the problem here is not whether legislators in 1890 intended to govern violent union conduct (or indeed any union conduct at all); it is whether unions today engage in conduct which violates current antitrust policy.

With the problem so defined, only one answer seems accurate: Violent union conduct, when considered from the point of view of present antitrust conceptions, is not only anticompetitive conduct but in fact the most predatory monopolistic conduct visible in the country today. One must not assume that the only way competition and its benefits can be frustrated is through the peaceful and consensual modes of conduct characteristic of modern business.

Picketing is not always in large numbers, and it is not always associated with strikes. Frequently, picketing is done by one or a few persons, entirely peaceably parading before an establishment with signs identifying it as a "nonunion company" and requesting all comers to note that fact. Such picketing has been defined, variously, as "publicity" or "organizational" or "recognition" picketing. However defined, it normally has one objective — to establish the picketing union as bargaining representative for the employees of the picketed business.

It is equally accurate, and more relevant to the purposes of this paper, to describe such picketing as a means of extending the union's monopoly of the labor supply or as a means of removing the competition of nonunion employees and employers. Indeed, one commonly hears that a union has sought to "organize" a given employer mainly because some already "organized" employer has complained of the *competition*.

It may be argued with much force that such picketing, when genuinely peaceable, represents nothing more than the exercise of a basic right — the right of free

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men to advance their interests by honest and peaceful methods. But when one remembers that businessmen are constantly being held guilty of antitrust violations though their conduct is honest, peaceable, *and* consensual (as in the price-fixing, price-discrimination, and tying-clause cases), it will be seen that the argument, however powerful, is of no relevance to our inquiry.

On the contrary, perhaps the most striking feature of current antitrust policy is that it is essentially directed at honest, peaceful, and even consensual methods of coping with competition. When a union brings economic pressure to bear upon a nonunion business – as all, even the most peaceable, picketing is designed to do – it is engaging in precisely the same kind of conduct that leads to antitrust prosecutions in the case of businessmen. Economic pressure is used to reduce or to eliminate competition, with a view ultimately to producing labor prices higher than those which would otherwise prevail.

Interest Rather than Accomplishment

Again, it is necessary to remember that antitrust convictions do not turn upon the question whether the objective has been demonstrably gained; the Antitrust Division and the Federal Trade Commission are never required to prove either that competition has actually been destroyed or, much less, that prices are actually higher than they would have been in the absence of the conduct found unlawful.

If in a dispute with one employer the union pickets or strikes another, as a means of bringing pressure to bear upon the first, it is engaged in the type of conduct most usually referred to as a "secondary boycott." When one pursues the facts of such cases with some persistence, one is bound to see that the "secondary boycott" is nothing more than a somewhat extended form of the same kind of pressure which the so-called "primary" picket line seeks to impose, and usually for the same ultimate objectives. The "secondary boycott" differs from the primary picket line mainly geographically; the locus of application of the pressure is different; the end sought is the same: the removal of competitive resistance.

Unions frequently pursue their monopolistic or anticompetitive objectives by "contractual" devices. Some unions insist that collective agreements provide for hiring only by supervisors who are themselves members of the contracting union. If such unions have by-laws which require members to prefer fellow-members

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over nonmembers in hiring,[27] the insistence upon the contractual clause in question is a means of eliminating competition from nonunion workers. Contracts requiring union membership as a condition of employment ("closed shop" or union shop) are obvious examples of the same sort of thing.

Another common device is the clause requiring employers to deal only with unionized suppliers or, in any event, with employers whom the union does not characterize as "unfair." From the point of view of current antitrust policy, the use of such clauses by a union which occupies a "dominant" position must be regarded as anticompetitive. The analogy to the *Schine* and *United Shoe* cases is clear. And so too with clauses limiting the subcontracting rights of employers; the union is using its dominant position in order to foreclose markets, as the phrase goes.

Common Union Practice

The reader familiar with labor relations will perceive that the modes of conduct thus far recounted are not only common forms of union action but also among the *most* common form of union action. There are only a few union activities which do not fall, at least in principle, within the categories of conduct thus far described. Indeed, if one were to push the logic of current antitrust policy all the way, collective bargaining would itself have to be considered unlawful as a combination in restraint of trade. It involves "collective" price-setting, not individual agreements establishing the price of labor. The same would be true of the simple, peaceable, primary strike for higher wages and better working conditions.

When Justice Douglas said in *Socony-Vacuum*[28] that the Sherman Act prohibited *all* tampering with price structures, he certainly was not thinking of combinations of workers. But consistent application of his doctrine would nevertheless bring collective bargaining and strikes within the ban of the antitrust laws. For the object is always to secure labor prices higher than those which would prevail in the "free and untrammeled" labor market.

Few people are likely, however, to take seriously the idea that collective bargaining violates antitrust policy when the union engages in bargaining only on behalf of employees who voluntarily ask it to do so. The more cogent analysis would seem to be that the union in such a case (at any rate when it falls short of a full monopoly of the entire working force) is

[27] Cf. *International Typographical Union* v. *NLRB*, 365 U.S. 705 (1961).

[28] *Supra*, note 8.

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the analogue of the single firm, which, too, is normally an aggregate of human beings in some legal form or other. Thus, just as the individual (nonmonopoly) firm does not violate the antitrust laws in holding out for the prices it wants, the individual union may not be regarded as violating those laws when it bargains or strikes for the labor prices it wants.

The conceptual, legal difficulty arises when the union asserts the authority or power to bargain not only for its members but also for employees who would rather bargain for themselves. For then, in the very act of collective bargaining the union is eliminating competition in what may fairly be called a "predatory," or at least an aggressive, way. The people who prefer to bargain for themselves presumably wish to establish labor prices different in some way from those which the union seeks to impose; whether higher or lower is of no significance; the fact of difference is what makes *them* competitors, and the union's assertion of exclusive bargaining authority a competition-suppressing (or "predatory") activity.

Exclusive Bargaining Status

For the reader unfamiliar with current labor legislation perhaps it is desirable to add that exclusive bargaining status is a privilege which the National Labor Relations Act confers upon unions which are selected by a majority of employees in any appropriate bargaining unit as their representative.[29] For example, if in a unit of 1,000 employees 301 vote in favor of union representation, 300 vote against union representation, and the remaining 399 do not vote at all, the union becomes the exclusive bargaining representative of all the employees. The 300 who voted against union representation and 399 who did not vote at all may not under the law deal directly with the employer. In fact, the employer would be guilty of an unfair labor practice if he attempted to deal directly with the 699 employees who showed either no interest in the union or active opposition. Here we have an example of one statutory scheme apparently in deliberate conflict with another.

One dramatic phase of contemporary unionism remains to be measured against current antitrust concepts. In holding the Aluminum Company of America in violation of the Sherman Act,[30] Judge Learned Hand placed considerable emphasis on the fact that Alcoa was practically the sole producer of aluminum ingot in

[29] NLRA, Section 9 (a), 49 Stat. 449.

[30] *U.S.* v. *Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945).

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the United States. It had never before been thought that the mere possession of the status of exclusive producer of any good or service automatically violated the antitrust laws; some kind of aggressive exclusionary, "monopolizing" conduct had previously been required.

But Hand pointed out that price-fixing was a per se violation of the antitrust laws, certainly when the price-fixing combination was dominant in the "relevant market." And this being true, he felt constrained to conclude that Alcoa must necessarily have violated antitrust policy and law every time it set a price, since it by itself occupied the same kind of dominant market position as the price-fixing combinations which had so frequently been found guilty of Sherman-Act violations.[31]

Whatever its legal, logical, or common-sense merits may be, if the rationale of the *Aluminum* case still holds good, it is difficult to avoid the conclusion that all collective bargaining, at least on an industry-wide level, is contrary to antitrust policy when a union enjoying a near-monopoly of the working force in the particular industry is involved. The labor-price which the United Steelworkers of America agrees to, at whatever level, is as much (or as little) a monopoly price as the prices at which Alcoa agreed to sell its products. For the Steelworkers' control of the labor force in the industries in which it operates is as extensive as Alcoa's was with respect to the production of aluminum ingot. This would be true even if the Steelworkers never engaged in mass picketing as a means of securing its demands. The fact that its strikes are at times attended by mass picketing[32] makes the case against it an *a fortiori* one. The same reasoning applies, of course, to all other unions which share the fore-

[31] "Starting . . . with the authoritative premise that all contracts fixing prices are unconditionally prohibited, the only possible difference between them and a monopoly is that while a monopoly necessarily involves an equal, or even greater, power to fix prices, its mere existence might be thought not to constitute an exercise of that power. That distinction is nevertheless purely formal; it would be valid only so long as the monopoly remained wholly inert; it would disappear as soon as the monopoly began to operate; for, when it did — that is, as soon as it began to sell at all — it must sell at some price and the only price at which it could sell is a price which it itself fixed. Thereafter the power and its exercise must needs coalesce. Indeed it would be absurd to condemn such contracts unconditionally, and not to extend the condemnation to monopolies; for the contracts are only steps toward that entire control which monopoly confers: they are really partial monopolies." 148 F.2d 416, 427-8.

[32] Cf. *Youngstown Sheet & Tube Co.*, 130 NLRB 1295 (1961).

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going characteristics. And they are many.

The Conflict Summarized

By way of summary and recapitulation, a number of significant points seem evident. The avowed objective of trade unions is to secure for their members higher labor prices in one form or another than they could achieve without unionization. When thus stated, the objective does not infringe upon antitrust policy any more than the profit-maximization goal of an individual firm does. If unions did nothing more than peacefully, honestly, and otherwise lawfully represent in collective bargaining those employees who asked them to do so, there could be no conflict with antitrust policy (assuming conditions in which the rationale of the Alcoa case did not control). The same is true in respect of the simple, direct, and peaceful strike for higher wages.

But unions seek their maximization by monopolistic means. They expressly set as their goal the enrollment of all workers in what they refer to as their jurisdiction. Their argument is that in the absence of such complete unionization the competition of nonunionized employers will make it impossible for the unionized employers to stay in business while paying union wages. But this is a classic monopoly argument, being no more or no less true or acceptable when made by a union than when made by any other aggregate of persons banded together for their economic advancement.

Moreover, unions pursue their monopolistic objective to a considerable extent by physically and economically aggressive means: mass picketing, stranger picketing, secondary boycotts, compulsory-unionism agreements, and the other methods of foreclosing competition which have been heretofore described.

Finally, having reached monopoly- or near-monopoly-control of the labor supply in a number of labor markets, they are in the same position as all other monopolists; when conditions are otherwise propitious, they are able, that is, to exact monopoly prices for the services they control.[33]

The foregoing pages do little more than briefly summarize the monopolistic objectives and the anticompetitive methods which characterize contemporary trade unionism. But I take the summary, skimpy as it is, to be sufficient to

[33] For an analysis of the conditions necessary to the emergence of monopoly prices which demonstrates the inadequacies of antitrust policy and of Judge Learned Hand's understanding of the problem (*supra*, note 31), see Mises, *Human Action*. 1st ed. (New Haven: Yale, 1949), p. 354 et seq.

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establish that the apparent conflict between trade-union activities and antitrust policy does in fact exist.

As indicated at the beginning of this paper, I am aware that establishing the existence of conflict does not automatically resolve the problem of what to do about it. However, it does help some. For example, I cannot imagine how anyone who is in favor of free competitive markets can take the position, after becoming aware of how unions are hampering such markets, that nothing at all needs to be done about the conflict. On the other hand, such a person must be quite sure that antitrust policy is the defender of free markets which it is advertised to be, before insisting even upon its retention, let alone its extension to trade-union activity.

It is at least logically possible that antitrust policy, despite its claims, is as inimical to free markets as much of trade-union activity is. If this logical possibility should turn out to be a fact, it would follow that applying the antitrust laws to trade-union conduct could not promote free markets – and that, indeed, it might even hamper them still more. Thus it seems indispensable to examine the contention that antitrust policy is necessary to free competition.

PART II

Free Competition & Antitrust Policy

IT IS a remarkable fact that the only determined opposition to antitrust policy which exists today is coming from proponents of that school of thought which is probably best identified as *laissez faire*.[34] Communists, socialists, new dealers, new frontiersmen, and all other proponents of government ownership or extensive governmental control of the means of production are to a greater or less degree in favor of the antitrust policies which have been developing ever more extensively in this country since 1890.

What makes this fact remarkable is that free competition *is* as central to laissez-faire thinking as it is *said to be* to antitrust policy. For a laissez-fairist, the concept of free competition, or its social embodiment, the free enterprise system, is in fact the basic principle of social organization.

[34] See, for example, the comprehensive and tightly reasoned approach in Rothbard, *Man, Economy, and State* (New York: D. Van Nostrand, 1962), II, 560-660.

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The credentials of laissez-fairists as friends of free competitive enterprise are in somewhat better order than those of the socialists, new dealers, and other proponents of more powerful government who find so much to praise in recent antitrust trends. Purely on the basis of this fact one might be inclined to challenge the contention that antitrust is indispensable to the free competitive enterprise system. For it does seem strange that antitrust, allegedly indispensable to free enterprise, should find friends among people who are at least very cool to free enterprise and at most its deadliest enemies.

However, establishing guilt by association is always less satisfactory than rational demonstration of the truth of a charge. The laissez-fairist charge is that antitrust is the enemy of free competitive enterprise;[35] the antitruster insists that it is an indispensable friend. There is only one way to resolve the issue rationally: the key concepts, free competition and free enterprise, on the one hand, and antitrust policy, on the other, must be defined, and their relationships to each other explicated.

A Useless Definition of Freedom

Free competition and free enterprise *may* be defined as *whatever area of freedom of action and choice government and law leave to the economically active members of any political community.* One suspects that this is the way in which many persons today, especially interventionists, think of free enterprise and free competition. But the trouble is that when they are so defined our key terms become useless, as well as actually not what the average intelligent person is likely to think of when they are used. Russia today would be a free-enterprise nation, under the definition.

So defined, to be brief about it, free competition and free enterprise would exist always and forever, while men are men. For it is simply inconceivable that government could ever completely eliminate choice from either economic or social life. While men are men, they will be left choices of action, they will have to choose among alternatives, and they will choose, no matter how powerful or how interventionist their government may be.[36]

As a useful semantic entity, immune to erosion by subjective and arbitrary manipulations of meaning, the freely competitive enterprise *system* denotes a society in which each of its members has his property and contract rights

[35] *Ibid.*

[36] Cf. Bertrand de Jouvenel, *The Pure Theory of Politics* (New Haven: Yale, 1963), pp. 47, 69-95.

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intact. This is not only a workable semantic entity; it is also the historical meaning of the expression – the meaning attached to it both by historical development and the general understanding of that historical development. The free competitive enterprise system is distinguished semantically and historically from mercantilism, on the one hand, and socialism, on the other, by the fact that it recognizes full property rights in its members and envisions government as a limited-purpose tool designed mainly to protect property rights and to enforce contracts.

Property and Contract Rights

This is not the place to trace in detail the tortured events which led Western society from feudalism through mercantilism to the free competitive enterprise and limited government system. Every student of law knows that in early feudal days there was virtually no such thing as a concept of private property, only a system of limited tenures adding up in principle and largely in fact to an essentially tenant and landlord relationship, with the king as landlord and all others as tenants. Every student of law knows too that in the beginning, the concept of freedom of contract was equally unknown, with custom and law making interpersonal relationships largely a matter of status rather than one of consent. As Sir Henry Maine put it in the nineteenth century, "the movement in the progressive societies has hitherto been a movement from status to contract."[37]

Out of the feudal tenures, the concept of the fee-simple absolute grew; and out of the intricate web of legal and customary status relationships the concept of freedom of contract grew. The right of private property gave each person control of himself, of that which he produced, and of that which he came by in any other lawful manner, whether by finding, by gift, or by inheritance. The right of freedom of contract, actually a corollary of the right of control implicit in the right of property, gave each man the freedom to dispose by consensual arrangement of all the subjects of his property right. Serfdom, slavery, and all the other burdens and restrictions which limited men's freedom of action were sloughed off as time went on, till in the middle of the eighteenth century it was possible for men to reason clearly and systematically about the system of political economy that was growing up about them. And this systematic reasoning was set forth in the works of David Hume and Adam Smith, the decisions of the

[37] *Ancient Law.* Pollock ed., 1930. p. 182.

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great English judges, such as Mansfield, and the dramatic eighteenth century political developments here and in France.

Constellation of Freedoms Inherent in the Right of Private Property

What made ours a free competitive enterprise system was the constellation of freedoms found to be inherent in the right of private property: freedom to go into any business at will; to form associations; to produce at will; to exchange at will, upon terms mutually satisfactory to the parties to the exchange. As the House of Lords pointed out in the *Mogul* case[38]— in my opinion the most enlightening analysis of competition to be found in any authoritative legal source — the exclusive job of the common law is to see that competitors do not assault each other, cheat, or rob. When the law goes beyond that point, when it seeks to impose standards of "fairness" in addition to the basic standards of honesty and peacefulness, by implacable necessity it introduces purely subjective standards which know no limitations other than those which the prejudices and predilections of the judges and legislators may suggest. More important than that, the result is a substitution of governmental regulation in place of *free competition.*

These are the considerations which Bowen, L.J. had in mind when he held in the *Mogul* case that even the most aggressive kind of competition could not be considered tortious as long as it was honest and peaceable. He said:

> Until the present argument at the bar it may be doubted whether shipowners or merchants were ever deemed to be bound by law to conform to some imaginary "normal" standard of freights or prices, or that Law Courts had a right to say to them in respect of their competitive tariffs, "Thus far shalt thou go and no further." To attempt to limit English competition in this way would probably be as hopeless an endeavour as the experiment of King Canute. But on ordinary principles of law no such fetter on freedom of trade can in my opinion be warranted. A man is bound not to use his property so as to infringe upon another's right. *Sic utere tuo ut alienum non laedas.* If engaged in actions which may involve danger to others, he ought, speaking generally, to take reasonable care to avoid endangering them. But there is surely no doctrine of law which compels him to use his property in a way that judges and juries may consider reasonable: see Chasemore v. Richards, 7 H.L.C. 349. If there is no such fetter upon the use of property known to the English law, why

[38] *Mogul Steamship Co., Ltd.* v. *McGregor, Gow & Co.*, (1889) A.C. 25

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should there be any such a fetter upon trade?. . .

The substance of my view is this, that competition, however severe and egotistical, if unattended by circumstances of dishonesty, intimidation, molestation, or such illegalities as I have above referred to, gives rise to no cause of action at common law.[39]

If I am correct in saying that free competition is a useful and meaningful expression only when defined as a condition which exists when men have their property and contract rights intact, it necessarily follows that antitrust policy is inexorably in conflict with it, and this is as true empirically as it is logically.

For, as already shown in some detail, antitrust policy is essentially characterized by more or less arbitrary and unpredictable restrictions upon the property and contract rights of antitrust defendants. The one thing almost never seen is an antitrust prosecution against businessmen for violent or fraudulent conduct. Every successful antitrust prosecution in one way or another attacks and limits a peaceful and honest exercise of a property or contract right. The antimerger decisions prevent people from disposing of their properties as they wish. The antiboycott decisions tell people they cannot withhold their patronage as they wish. The decisions against tying clauses drastically limit contractual rights. The decisions against price discrimination tell both sellers and buyers what kind of price contracts they are to make.

To repeat: in none of these instances do the courts find the defendants guilty of fraud or violence; in each, their property and contract rights are drastically limited.

Consequences of Restrictions

And what are the empirical consequences of these comprehensive restrictions upon property and contract rights? Well, one immediately perceptible consequence is that — if antitrust prosecutions are effective — the shape and structure of American industry are different from what they would be if the parties had been allowed to do as they wished with their businesses, subject, of course, to ultimate approval by the consumers on the free market. The point may be made vividly by calling the reader's attention to the fact that such firms as General Motors, Chrysler, U.S. Steel, and General Electric would probably not be in existence today if current antitrust policies had been applied consistently in the past 75 years.

[39] Court of Appeal (1889) L.R. 23 Q.B.D. 598.

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Anyone who doubts this need only read the U.S. Supreme Court's decision in the *Brown Shoe* case,[40] and his doubts will be removed. Our "big business" is easily the most characteristic, creative, and unique of all American institutions. I can think of no more compelling way of establishing the anomalous character of our antitrust policies than to bring attention to the fact that strict and consistent pursuit of those policies would have aborted this most productive of all American institutions.

Another equally perceptible consequence— again if antitrust prosecutions mean anything — is a drastic modification of business practices. Consider the price-discrimination cases.[41] They hold that sellers must charge all their buyers the same prices for goods of like grade and quality.[42] A seller may escape liability for an instance of price discrimination among his buyers, if he can prove that he responded to a move in the direction of lower prices by one of his competitors.[43] Again, liability may be escaped if the seller can prove to the satisfaction of the Federal Trade Commission that the actual cost of selling to one buyer was less than the cost of selling to another.[44]

These are not easy defenses to make. But that is not the point. The point is that pricing is one of the most sensitive and most profoundly significant aspects of property and contract rights—and of free competition. To compel a seller in general to charge all buyers the same price is drastically to restrict free competition.

What is true empirically of the antimerger and the antiprice-discrimination phases of antitrust policy is true also of all other phases of that policy. These sharp invasions of property and contract rights necessarily confine and limit the condition which exists only when property and contract rights are intact — free competition.

Price-Fixing Agreements

Special attention must be paid to price-fixing agreements, for they seem an interesting anomaly. On the one hand, they are undoubtedly exercises of contract;

[40] *Brown Shoe Co.* v. *U.S.*, 370 U.S. 294 (1962).

[41] For a scathing critique of the Federal Trade Commission's apparent determination to make the Robinson-Patman Act even more anticompetitive than Congress did, see Handler, "Recent Antitrust Developments," 112 *U. Pa. L. Rev.* 159, 183 et seq. (1963).

[42] Cf. *Corn Products Refining Co.* v. *F.T.C.*, 324 U.S. 726 (1945); *F.T.C.* v. *A. E. Staley Mfg. Co.*, 324 U.S. 746 (1945).

[43] *Standard Oil Co.* v. *F.T.C.*, 340 U.S. 231 (1951).

[44] Robinson-Patman Act, Sec. 2 (a), 49 Stat. 1526 (1936).

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but on the other, it is difficult to see how they can be considered to be forms of competition. The anomaly disappears upon resort to further analysis of the nature of a free society. Such analysis must necessarily conclude that there is nothing in the concept of freedom which commands all people to compete with each other. One acts the free man, in short, as well when he declines to compete as when he chooses to compete. Moreover, everyone can think from his own experience of examples of voluntary withdrawals from competition which were in no way censorable.

The common law dealt with price-fixing agreements in a peculiar way; it simply refused to enforce them. It might perhaps have gone so far as to hold such combinations fraudulent, at least in collusive-bidding cases where the parties deliberately convey the impression that they are in competition. It is too bad that this idea was never developed; but at any rate, the common law was quite correct in finding that price-fixing combinations were in no other way violations of property or contract rights.

The fact that price-fixing combinations, while exercises of contract rights, are not competitive does not mean that property and contract rights must be limited if we are to have competition. On the contrary, the notorious fragility of price-fixing combinations is directly attributable to the continued possession and exercise of property and contract rights by members of price-fixing combinations.

These combinations break down as swiftly and as consistently as they do precisely because the participants remain in control of their business – *and* responsible for its losses. When a businessman sees that his goods are not moving at the prices established by such a combination, he does the natural thing: he lowers his price. Perhaps he does this furtively; but he still does it. The American experience with the so-called "Fair-Trade" laws makes the point as vividly as possible. These laws are an attempt to *establish* price-fixing by force of law. But so unwilling are businessmen to stick with price-fixing of any kind, whether by government or private contract, that they have made the job of enforcing "Fair-Trade" laws extremely difficult.

The Common Law Refused To Enforce Price-Fixing Pacts

Once again the appropriate conclusion seems to be that the common law was its usual fair and common-sense self when it confined itself merely to refusing to

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enforce price-fixing agreements. On the one hand, it could not hold such agreements unlawful, since they were valid exercises of property rights. On the other hand, their relationship to competition was at best imperceptible and at worst destructive. Denied legal enforcement, they would probably soon break down as a consequence of the ineradicable tendency of all businessmen to respond to changing demand and supply conditions (for bankruptcy is the alternative). Hence, while denying enforcement to price-fixing contracts might not have been the most elegant and logical solution, it was a fair and practical way out of the dilemma.

And it still seems so to me – far more practical, and just, than to send men to jail because they have peacefully agreed among themselves as to what they should charge for their property. There is in my opinion no way to justify this kind of savage treatment of some people for doing the very kind of thing that all of us – including lawyers – do at one time or another. For everybody does engage in what amounts to price-fixing agreements at one time or another – working men when they participate in union activity, professional men when they set their fees in accordance with prevailing views among themselves, retailers, farmers, air lines, shipping companies, and so on.

The situation is not improved when one considers the contradictory conduct of the federal government in the premises. While sending some people to jail for agreeing on prices, it considers nationwide price-fixing agreements laudable if exacted by trade unions; it visits penalties on farmers for departing from the prodigious price-fixing scheme known as our agricultural policy; it forces uniform prices on air lines and other participants in the transport industry; and finally, as we have seen, it forbids individual businesses to vary their prices downward at will.

I am sure that human ingenuity is capable of rationalizing each of these contradictory programs. The one thing that no amount of rationalization can do, however, is to demonstrate that they are consistent with the principle that every member of a free and decently run society is entitled to the same kind of rights.

A Tendency To Break Down

We have yet to develop the most illuminating of all the insights to be derived from consideration of price-fixing agreements. As already suggested, price-fixing agreements, even those enforced by government, are under constant

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pressure, constantly in danger of breaking down. The reason for this is to be found in the law of incessant change. Supply and demand conditions are always changing. Hence, no matter how sheltered the market may be in which a price-fixing combination operates, the fixed prices are *nearly* always out of date – and *always* on the *verge* of being out of date. A price-fixing combination sheltered from competition by government power can hold out relatively long. The government can keep price-cutting competitors from entering the field at all; or it can throw into jail those members of the combination who depart from the fixed prices; or it can through the subsidy process make up the losses of the combination members who are compelled by law to sit quietly by while the unregulated competition takes the customers who refuse to pay the erroneous prices.

But none of these methods of keeping down or discouraging competition is available to a strictly private, nongovernmental price-fixing combination in a free competitive enterprise system. One of the basic features of such a system is that everyone has a legal right to seek his fortune in any field of activity; therefore, the members of a price-fixing combination cannot keep out competitors who are always attracted when they see prices out of line with existing supply and demand conditions.

Another basic feature is that everyone has a right to charge whatever he wishes for that which is his; therefore, the members of a price-fixing combination cannot prevent the competition from charging prices lower than they feel are proper. Finally, the common law refuses to enforce price-fixing agreements; and, therefore, the members of the combination cannot avail themselves of the power of government to keep internal insurgents from breaking ranks.

The Basic Flaw in Antitrust

Thus, practically everything works against nongovernmental price-fixing while little or nothing works in its favor. The restless law of incessant change, the desire for profit on the part of investors who are constantly seeking promising investment opportunities, the notorious preference of businessmen for selling goods rather than watching them gathering dust on the shelves – all these are constantly battering against any structure of prices established only by a legally unenforceable private agreement.

The light which these considerations shed upon the nature of

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the competitive process in a free enterprise system illuminates the basic flaw in antitrust policy and philosophy. That basic flaw is its quite erroneous conception of what a competitive economy is, and of how it operates. Reading many of the opinions of the Supreme Court and of the Federal Trade Commission, and perusing the antitrust laws themselves, brings to one's mind the average text for the beginning college course in economics, with its so-called "perfect competition" model, the purely imaginary construct which Professor Mises refers to as the model of the "evenly rotating economy."[45] Everyone remembers the fiction: sharply (and therefore hopelessly unrealistically) defined industries characterized by businesses so numerous, so small, and so homogeneous that none can affect the price structure; instantaneous and automatic adjustment by all firms to all supply and demand changes; identical products and product mixes – and so on.

The Model Is Purely Imaginary

I do not wish to deride this model. I am willing to accept the assurance of economists that it serves some useful purposes – in the classroom or in the economist's study. But it is vicious in the highest degree to seek to impose this purely imaginary construct on living men in a living society. The model was never conceived for such a purpose. The most persistent efforts on the part of legislators, judges, and bureaucrats can never squeeze a society of living people into such a construct. And even if they could, the results, however pleasing to them, would never be tolerable to the manhandled subjects of the experiment.

I do not intend to use up energy and space in tracing out the many ways in which the model departs from reality. The reader will find that job magnificently done in Professor Mises' great work, *Human Action*. It will suffice for present purposes to point out that antitrust policy built around conceptions derived from the "perfect competition" model must necessarily be inimical to both the basic principles of the free society, private property and free contract, and to their most characteristic product, the free competitive enterprise system.

The Law Does More Harm than Good

The analysis of the causes of breakdowns in price-fixing combinations goes a long way toward explaining the conflict; the model neglects the three factors which played so critical a role in that

[45] Mises, *op. cit.*, p. 245 et seq.

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analysis: incessant change, the profit-seeking impulses of investors, and the preference of businessmen for selling goods. The whole of contemporary antitrust policy suffers from the same short-sighted failure to perceive the multitude of structural and functional checks which a competitive economy opposes to those who would abuse it. Putting the Antitrust Division to work to keep a free competitive enterprise economy free and competitive is not only silly but harmful. The normal profit-seeking drive built into vigorous men insures competition. Antitrust policy is serving only to distort, frustrate, and ultimately inhibit competition.

I should like to conclude this section by suggesting that antitrust policy based on the perfect competition model makes about as much sense as a law decreeing that all men must at their maturity be five feet eight inches tall. Such a law would relate to reality much as "perfect competition" antitrust policy relates to real competition. We are never going to force society into the "perfect-competition" mold, serious injustice and great social cost are the product of the attempt, and the results of ultimate success, if that were possible, would be horrible in all ways, esthetically, morally, juridically, and economically.

PART III

Unions & Antitrust

SUBJECTING UNIONS to the antitrust laws is probably not a practical proposition, and, even if it were, the result would be, not a freer and more competitive economy, but an economy more and more regimented by government.

It is probably not practical for several reasons. First and foremost, it seems to me highly unrealistic to believe that it is politically feasible to apply the antitrust laws as comprehensively to unions as they are applied to businessmen. The reader must bear in mind here that practically all union conduct beyond voluntary bargaining on a one-company basis and similar (peaceful) strikes, runs counter to current antitrust policy. Picketing, boycotts, the restrictive contractual devices we have described, and multi-plant or industry-wide bargaining by the larger unions are all in conflict with current antitrust attitudes. I simply do not believe that this country is politically capable of either enacting or enforcing an antitrust policy which would

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condemn all those types of union conduct.

There is a further complication, intimately associated with this political difficulty. As a technical matter, merely subjecting unions to the antitrust laws would not reach the aspects of union action which represent the worst threat to genuinely free competition. Those aspects are in fact to a considerable extent the product of legislation. The capacity to destroy competition which unions so frequently demonstrate traces in large part directly to the special privileges granted them in federal and state labor relations legislation: the strict limitations on peaceful anti-union action by employers, the exclusive bargaining authority of majority unions, and the advantages derived from having labor relations laws administered by agencies which believe their duty to lie in encouraging the spread of monopolistic collective bargaining.

In short, antitrust policy and labor relations policy are in direct conflict. Subjecting unions to antitrust laws while leaving them with the special privileges inherent in labor legislation would be like slamming on the brakes while the foot is still pressing all the way down on the accelerator. We'd go into quite a skid.

A Treatment but Not a Cure

No one is in a position to predict the eventual outcome of the event. There might even be a good result. Subjecting unions to the antitrust laws would of necessity mean providing direct access to the federal courts in many of the labor cases which now must go, at least in the first instance, to the National Labor Relations Board. The federal courts are, in my opinion, so much more competent and so much more disinterested than the National Labor Relations Board that we should be likely to get a more coherent and consistent structure of legal doctrine applicable to union conduct than we have now.

While such a result is to be desired, however, it would still not remove the inherent conflict between our labor relations and our antitrust policies. Unions would still be encouraged under labor relations policies to build up monopolistic power, only to be discouraged under the antitrust laws from using it. In all probability, the fundamental monopolistic privileges would remain (exclusive bargaining status, compulsory unionism agreements, peaceful picketing, and so forth), and the main result would be continued conflict in our fundamental policies.

Furthermore, subjecting unions

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to the antitrust laws would not cope with the most egregious and most harmful of the anticompetitive union activities, namely, violence and intimidation. I am aware of the almost universal tendency to regard violence in labor disputes as unusual, or as a "thing of the past." But the fact is, unfortunately, that violence and intimidatory techniques are at least as widespread today in labor disputes as they have ever been. I have files documenting this statement quite as extensive as my files on any other aspect of labor relations.

More Power to Government

If intimidatory practices and the special privileges accorded by labor relations legislation are the main means by which unions destroy competition, as I believe, then it follows that applying the antitrust laws to unions, even if politically feasible, would do no real good. It would not work in the practical sense that it would not remove the fundamental harm which unions do to a competitive economic order.

One can be sure of only one result – substantial increase in the discretionary (i.e., arbitrary) power of the government over the economy. This would follow from either comprehensive or limited application of antitrust principles in labor relations. Consider, for example, the proposal to limit the size of bargaining units. There is admittedly no objective *principle* available to tell us just how large or widespread any bargaining unit should be.

Proponents of the idea admit that they must rely upon the discretion of government agencies to determine in particular cases whether bargaining should be on a one-local-union basis, or an area-wide basis, or an industry-wide basis.[46] Confronted directly, this would appear merely another method of depositing additional arbitrary power over the economy in bureaucratic hands. I find it impossible to reconcile this proposal with a genuine free-competition policy, and still less with the basic property and contract rights underlying such a policy.

The same conclusion is inevitable with respect to the proposal that the antitrust laws be applied to certain individual unions, no-

[46] Thus, Professor Edward H. Chamberlin, an advocate of a policy of restructuring labor unions, acknowledges that "the application of this principle might involve diluting the strength of some unions which are powerful because they are small and strategically situated, by merging them with larger units. In other cases, it might involve the breaking up of large units into smaller ones." Chamberlin, "Labor Union Power and the Public Interest," in Bradley (ed.), *The Public Stake in Union Power* (Charlottesville: University of Virginia Press, 1959), pp. 3, 20.

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tably the Teamsters.[47] The Teamsters are neither structurally nor operationally distinct from other unions. They are just more so, in most ways; they do everything more effectively than most other unions (including, if gossip in the trade is accurate, adhering to their contractual commitments). There is irony in the thought that the most successful of all unions should be burdened, as are the most successful businesses, with special antitrust duties. But irony ought not to be allowed to rule one's judgment. Giving free reign to animosity and vengeance is not likely to promote free competition or to establish a just, sensible, and coherent legal system.

If we wish to gain the benefits of free competition in labor relations, we must first and foremost devote as much of our energies and our resources as necessary to the elimination of the violent and intimidatory methods which are fundamental to the anticompetitive practices of trade unions. The peaceful and honest methods which unions use in order to advance their interests may be bothersome, but they are not ultimately dangerous. Indeed, as exercises of fundamental property and contract rights, peaceful strikes and boycotts must be regarded as competitive devices rather than as destroyers of competition.

Withdraw the Privileges

The foregoing reasoning presupposes, however, that the special privileges granted unions by current labor relations statutes are withdrawn. In more detail, this means repeal of the monopolistic exclusive bargaining privilege and of all restrictions upon peaceful and honest anti-union activities by employers which do not apply with precise equality to pro-union activities by unions.

Concretely, if a union may take peaceful action to secure an agreement requiring union membership as a condition of employment, the employer should be allowed to take similar action in an attempt to establish nonunion membership as a condition of employment. Again, if a union may strike or picket peacefully to establish collective bargaining or to gain concessions from the employer, then the employer should be allowed to lock out employees as a means of resisting collective bargaining or to gain concessions from employees and their representatives. In short, I do not see how it is possible to have free

[47] See, for example, Senator John L. McClellan's bill to apply the antitrust laws to unions in the transportation industry. S. 2573, 87th Cong. 1st Sess. (1961).

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competition unless the competing parties are equally free to act within a broad and equal rule of law in pursuit of their own interests.

I have heard it said that such a rule-of-law regime is not only naive but also a sure way to excite violent reactions from trade-unionists.[48] As to the charge of naïveté, I would suggest that it is irrelevant: no one really knows what can be ultimately attained; the best that men can do is use their reason in pursuit of the means most likely to gain the ends they wish. If we wish to promote free competitive enterprise, we must establish and preserve property and contract rights, and we must do so equally among all men. Naïveté does not enter into that analysis. The only relevant questions are whether the end is really desired and the means appropriate.

As to the threat of a violent reaction, I suggest that there is already a great deal of violence in labor disputes and that there is really no proof that violence will increase if trade unionists learn that the decent citizens of the community are determined to require equal obedience to the law by all persons. Naturally, there will be violence if those likely to use it get the idea that nothing will be done about it. We have as much violence in labor disputes as we have today because prevailing ideology blinds itself to union violence or seeks anxiously to justify it and thus diminishes the zeal of the authorities in the enforcement of law.[49]

It seems self-evident to me that we have the resources to keep violence in labor disputes within acceptable limits – if we seriously wish to do so. At the outside there are no more than 17,000,000 trade-union members in this country. I have no way of knowing just how many of these are violence-prone; but they are people like other people and therefore, I judge, not particularly violence-prone. On the other side, as a nation we have vast human and material resources. It is a shame that they are directed as little as they are in the service of law and order.

The question which this paper raises is whether we are enough in favor of free competitive enterprise to do what is necessary in order to establish the rule of law and order without which free competitive enterprise cannot exist. ◈

[48] See the comments of Professor Bertram F. Willcox in *Industrial and Labor Relations Review*, XI, 272, 273 (1958).

[49] Cf. Petro, *Power Unlimited: The Corruption of Union Leadership*, (New York: Ronald, 1959), pp. 95, 99-101, 203-20.

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HARRY L. SMITH

YOU CAN'T STRIKE AGAINST

EMPLOYERS do not determine wages. Most of them would like to. Many of them think they do. But they can't. Why? Because the market steps in and holds them rigidly in its grasp.

The market is an abstract concept, just as is the center of gravity, moment of inertia, or metacentric height. Abstract thought originates in the minds of genius and is the only key to the secrets of the universe. It is the primary difference between man and animal. Mankind has usually reacted to the innovation of abstract thought with incredulity and animosity. Copernicus, Galileo, Newton, and Bacon all suffered ridicule and outright persecution for their ideas. Luckily mankind has now been sufficiently conditioned by rapid scientific advancement to accept on faith such things as Einstein's collapsible time and curvable space. Engineers know that they are bound by the laws of nature.

While physical science now seems to be safe from the prejudices of mankind, new fields of abstract thought are causing man to react as badly as did his medieval ancestors. The field of economics has become the new intellectual battleground, and the concept of market value versus labor value is the abstract concept which has literally divided the world.

The true and real value of any economic good is determined by the amount of labor required to give it utility, said Karl Marx. This concept struck an immediate chord of response among workers, who saw themselves as the only creators of wealth, and formed the basis for a flimsy pretext to confiscate private property in the name of the workers who had "created" it. Communists have sought

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desperately, but vainly, for a mathematical formula which would relate value and labor.

Combination of Cost Factors

The vast majority of worldly wealth is produced by a proper combination of cost factors. The market determines the value of any finished product. It also determines the value of each element of cost entering into its production. The entrepreneur must accept the "going price" of labor as determined by the market. Entrepreneurial ability enters the picture by properly combining cost factors. In this manner, the businessman can use his ingenuity and skill to determine total cost. The difference between this total cost and the market price of his product constitutes his profit.

By disregarding the concept of the market, communists and socialists presume that values can be determined by law. Consequently, they insist that it is better for "disinterested" politicians to determine values than for "self-interested" businessmen.

Self-interest is the basis for all economic stability and is the balance wheel of the market. In the specific task of searching for the market value of an hour of labor, employer and employee face each other on the see-saw of self-interest, each free to take or leave the price offered. It would be impossible to come even close to this elusive value were it not for the opposing forces of self-interest.

The laborer can enhance the market value of his services through experience, education, and dexterity. The businessman can affect the market value of his product through improvement of quality and service. This leads to the illusion that they can control the market, either singly or collectively. When working deep within the economy, both employee and employer often lose the perspective of the over-all market economy which finally establishes all values. This myopia has proven ideal for the introduction of Marxist concepts into Western civilization.

Supply and Demands Versus the Boss

Today the free market economy is regarded as an impractical theory having no place in modern, complex, practical, economics. There is no use in telling the modern laborer that it is not his employer but an abstract market which determines his wages. The answer is as obvious to him as was the flatness of the earth to the medieval man. He *knows* that the boss determines his wages and that strikes should be directed at him. After all, it is impossible to bargain collectively with a market!

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Even the businessman is none too sure. Doesn't he have a wage committee and a pricing policy? When it comes right down to it, were it not for unions and legislation, all wage and pricing decisions would be his. What he fails to realize is that he does not *determine* wages and prices but is *searching* for that shifting and nebulous true market value.

No government would attempt to determine, much less control, the center of gravity of all rigid objects, and is content to accept the earth's center as the focal point of all. Even more ridiculous would be an attempt to determine the value of each human economic interchange for purposes of individual or group control. The market value of any economic transaction is so complex that only the close study and self-interest of the parties involved can hope to approximate it. Only by sweeping away the internal and external barriers which prevent the harmonizing of free interchange can we hope to find humanity's economic center of gravity – the free market. And only by realizing that you can't strike against the market can we achieve peaceful industrial relations. ◈

IDEAS ON LIBERTY

Dividing the Pie

WHEREVER the pie is divided by the free market, one thing seems sure: Marx's surplus value theory will be vetoed. For persons will continue, as they have over the past few centuries in our relatively free United States, to recognize a bargain when they see one. That bargain is tools. Of our total output, perhaps as much as 95 per cent is because of the use of tools. And this is at a cost of only about 15 per cent of total output, as pay to those who have saved to create these tools. That, and not Marx's concept, is the miracle that creates a surplus of value.

F. A. HARPER, *Why Wages Rise*

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Are We ENSLAVED by MACHINES?

MALLORY CROSS

ARE MEN "enslaved by machines"? It is important to get at the truth or falsity of this idea, because it leads to legislation that affects all of us. People who are concerned about men's slavery to machines nearly always see it as a social question which can be solved by putting the right laws into effect.

The essence of slavery lies in serving or performing work unwillingly for another. The "other" may be a person or idea. If it is a person, we have a contest of wills. If it is an influence or idea, the contest will lie within the individual and the bondage is necessarily voluntary to some degree. As Dr. Ludwig von Mises has so clearly set forth in *Human Action*, we always do what we want to do, in the sense of choosing the most desirable – or least undesirable – alternative *of those available to us.*

Can a man, then, be "enslaved by a machine"? No, he cannot: a machine is neither a person nor an idea; it is a thing. And a thing has no stick to beat us with if we ignore it, nor can a thing have any effect on our conscience.

If a man voluntarily uses a machine to help him create new things from raw materials, he is not enslaved by his helper. The machine has neither will, nor power that is independent of that which man has constructed it to produce or use. It is serving the man, perhaps replacing a slave, but certainly not enslaving its owner.

If the owner is bound by *natural laws* to do certain things in order to keep his machine in working order (oil it, for example), he still is not a slave to his machine. First, it is a voluntary act; second, it is not the machine that demands the care, but his own desire to keep it in use.

Suppose a man invents a machine that cuts and assembles shoes faster than he could do the job by hand. By putting out a larger quantity, he is able to re-

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duce the price per pair and undersell his old friend who is still making shoes by hand. The latter gradually loses business until he is forced to close shop and seek work elsewhere. And the man with the machine now has to work sixteen hours a day managing his rapidly expanding business.

Has either of these men been enslaved by the new machine? Many persons would answer that both of them have, so, let's take a close look.

Mr. Smart invented a tool to help him. It works for him, and he is glad to be relieved of such drudgery as cutting out shoe soles by hand. He is willing to go on managing his growing business, even work more hours, because of the higher financial rewards (profits). With these, he can arrange for future vacations; his children can have a better education; his wife can have greater comforts at home.

He may complain about the long hours, but if the business is really a success, he could sell it or hire a manager. Or he could even go back to making shoes by hand. From his actions, we must assume that he is not working involuntarily for a machine; *it* is serving *him*.

A philosopher may say that Mr. Smart is a "slave" to the idea of getting rich, or of improving his condition; or a "slave" to the necessity of earning a living. But even if true, *they are not forms of "slavery" that can be successfully dealt with by government action.*

This may be made clear by discussing the other cobbler, Mr. Craft. What has happened to him? His will or desire was to go on making shoes by hand. He enjoyed his work and was proud of his craft. It was against his will that business fell off, finally forcing him to close his shop and look elsewhere for work.

Social Coercion?

According to one point of view, what happened to Mr. Craft is an injustice that has a *social* cause, and therefore requires a *social* remedy. It was the *economic power* gained by Mr. Smart when he invented his machine that forced Mr. Craft to do something against his will or desire. "No one," according to such a view, "has a right to use economic power to harm others. Mr. Craft has a right to go on being a cobbler if he wants to. He has been driven to involuntary servitude by a machine."

But does anyone have a right to use social power (the law) to harm others? That is the inevitable result of forcing consumers to support a cobbler just because he wants to be one. Must we then support the woman who makes

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unsalable pictures from thousands of bits of postage stamps glued on a board to represent birds or flowers – just because that's all she wants to do? Or a man who makes horseshoes where there are no horses – just because he likes to work with iron?

It is true that Mr. Craft was constrained to make a choice when business fell off. But he was forced to act by the necessity of earning a living – a *natural* necessity, neither socially imposed, nor imposed by the will of Mr. Smart. The cobbler was forced to choose by the failure of customers to seek him out and pay his prices.

Further, Mr. Craft was not at any time under bondage to either Mr. Smart or his machine. Even if he later got a job in Mr. Smart's shoe factory, the machine would still be helping him earn a living – serving him, not he serving it. Therefore, Mr. Craft was neither enslaved by Mr. Smart nor "enslaved by a machine."

What Can Be Done?

This is not the end of the problem, however. Granting that we are in sympathy with Mr. Craft, and would like to do something for him, what can be done?

Nature has imposed the necessity of earning a living. Society can relieve a member of this burden in only two ways: 1) by *voluntary* means: gifts, inheritance, private charity; 2) by *involuntary* means: theft, or by using government as the instrument to collect and redistribute the funds. *Note that in any case the burden does not disappear but is only shifted from one back to another.*

Mr. Craft could become the beneficiary of unemployment compensation, which necessarily calls forth the *involuntary* service (slavery) of others for his benefit through forcible collection of taxes.

But perhaps there is another way for government to help Mr. Craft in the name of society without imposing this injustice on everyone. Mr. Craft's business might survive if Mr. Smart didn't reduce prices. Couldn't the government help through price control?

To set a minimum price means that those who buy shoes are forced, *against their wills, and against natural conditions,* to pay more for shoes than is necessary. Only the arbitrary intervention of the government causes this injustice. And it is an injustice, though it costs each of us only a few pennies per shoe, because we otherwise could have that money to spend on something else. It is an injustice to all sellers who will not be able to sell their goods because this money that *would have*

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been available to help them earn their livelihood was diverted by government intervention for the special benefit of the cobbler.

Men, not natural necessity, have created this method of spreading injustice or slavery to a whole society.

I am sorry that *anyone* has to work to eat; sorry that not everyone can work at the craft or art he prefers; sorry that anyone is weak, or ill, or not very intelligent. But I am *not* sorry that some are able to live on gifts from others; nor that some are strong and healthy and intelligent to the point of genius. Not at all! *Why try to destroy that which is good, out of sympathy for that which is undesirable?*

Examples of Enslavement by Subsidy or Intervention

We seldom recognize the extent to which we are indeed "enslaved" by subsidy or intervention. When government keeps interest rates lower than the free market rate, numerous investments are made in machines and for other things that are economically unsound. Raw materials are used to produce things that people are not willing to pay for — unless they are given a subsidy in turn.

We are truly enslaved to the extent that we have involuntarily paid for storage bins bursting with rotting grain, for ships in mothballs, for goods and services poured into foreign countries that later insult us and drive us out, for rockets to the moon. We are enslaved by people who benefit from postal subsidies. Every working taxpayer is a slave to every farmer who gets a subsidy for not growing grain.

"Oh, it doesn't matter when it's such a little bit. I'm not aware of being poorer than I might be," is a stock response to these facts.

But think about it. In the United States, all governments combined spend nearly a third of the national income. If you earned $300 last month, then government — for somebody's alleged benefit — took nearly $100. It won't show up in your paycheck that way. But, besides what is withheld, everything you buy has taxes hidden in the price. Would you contribute that much *voluntarily*? Or have you other uses for that $100?

Whatever barriers to trade the government imposes in the name of society, with the sincere intention of promoting justice, will not only fail in that purpose but will impose further injustice on many. *All become slaves of the few* in the sense of involuntary servitude, of performing work for another against one's will, of being under bondage to the will of another person or persons.

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Abolishing Machines — A Retreat to the Cave

But some take an entirely different approach to the problem. They would restrict the use of machines for other reasons. They find them noisy, dirty, ugly, poisoning the air, spoiling the landscape – a general burden and a curse. Those people think it would be ideal to go back to the days when each homestead was self-sufficient, baking homemade bread, growing its own corn, smoking its own bacon, spinning its own cotton, making its own entertainment at home.

Despite certain virtues in the pioneers' struggle to better their conditions, would many today be willing to live in a world without mechanical aids? To be rid of unpleasant by-products of civilization, they would have to give up the advantages as well, both material and spiritual. Carried to its logical conclusion, abolishing machines would take us back to the caves, without even a bow or a firestick.

Imagine the man who has just invented an effective bow, coming home with a haunch of the first deer ever taken by bow and arrow. His mate greets him from the cave.

"Back so soon?" she growls. "You haven't had time to go to the pit and back. Lazy good-for-nothing! There's hardly a strip of bison left, and it's so dry the little ones can't chew it."

"Hush, till you see what I've brought."

"I suppose you found an old dead one that's too tough to eat." She follows him outside, where children of all sizes are already surrounding the haunch, ready to help cut it into strips when it is skinned. She darts over, shoving them aside, to poke and sniff the meat.

"This long stick killed it," he said. "See," he showed the children, "I put the little spear on the vine and – watch!" The little spear goes sailing to the edge of the clearing to stick quivering in the earth, far beyond where his throwing-stick could reach.

Yes, the invention of the bow to fling his short spear farther, harder, faster, more accurately than his throwing-stick gave late Paleolithic man a precious gift: more time. More time to store up reserves of food; more time to spend teaching his children vital skills; more time to draw, think, wonder.

Was he then "enslaved" by the bow? He certainly became dependent on it. And it eventually put out of business those skilled at making and using throwing-sticks. Though men for a time continued to hunt in groups, a man alone could now travel farther afield, ex-

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plore more of his environment, develop his individual talents more easily, become more civilized, less savage.

When I told a friend, an engineer, the title of this piece, he was puzzled that such a question could seriously arise.

"But machines are a boon," he said. "They're impersonal, just mechanical aids to help do a job or make things faster than we could do otherwise. They're a boon to man."

He is right. And thanks to savings invested in capital goods of all kinds, we not only can make things faster, but we can provide things which otherwise would not exist. First in importance is food and clothing. This means more human beings can come into life, and survive, within a given period of time.

A Bare Subsistence

At the dawn of the Industrial Revolution in the eighteenth century, well over 90 per cent of the population were engaged in agriculture. Those were times of want and misery for the vast majority of the English population. They labored from dawn far past sunset, at the mercy of the weather, and paid a large part of their produce to landlords and as taxes. Many were too poor to afford to eat the chickens they kept, the eggs produced, or meat more than once a week – or once a month in bad times.

As the Industrial Revolution got under way, women and children worked in factories and mines because otherwise the family could not have survived on what one man could then earn or produce. Gravestones in old cemeteries and other records reveal that mothers often bore 16 or 20 babies, only to have most of them die within two or three years. Perhaps only three or four would reach adulthood. But a century later, there were families with ten or twelve or even sixteen living children, well on their way to maturity. Many of these worked in factories or in cottage industries on rented machinery. But they were keeping alive.

This is not to imply that there were no injustices: there were serious ones. But they were not caused by machines.

Little by little those roaring steam engines, the stocking frames and spinning jennies, the turret lathes and milling machines, began to enable a man to produce enough surplus to raise his wages. Men could eventually support their family despite laws diminishing child labor and restricting women to lighter work.

Many well-meaning people have felt that industrial workers for over a century were enslaved by

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machines. They also complained about the long hours (not so long as on the farm), lack of air, light, sanitary facilities (none on the farm), insufficient time off for meals or rest, lack of safety precautions.

But a great many employers were neither careless nor unjust, nor even unsympathetic. There was little they could do about many of the undesirable things until later. Not until savings and tools, making possible greater output per man and inventions of new tools, had run through numerous cycles could men afford to reduce working hours and attempt other reforms.

Today, economists see the programmed, self-correcting, completely automatic assembly lines — not as monsters designed to create unemployment — but as wonderful means to release men and women from the boredom and drudgery of endlessly repeated operations. There is a tremendous advance in safety, too. The technician who observes a process, perhaps through closed-circuit television, will not lose a hand in the gears, or burn out his lungs by breathing chemically dirty air. And the ever-dwindling number of unskilled workers live far better and have more purchasing power than their grandfathers had, because automation has cut costs.

Half the employed persons in the United States are now engaged in service industries. The tremendous significance of that fact has escaped the columnists and headline-writers. Half the working population is now doing — with the help of machines — what used to be done by wife and children and servants, who went on working 14 hours a day at home long after such hours were outlawed in factories. Many of these modern services were left undone before. Machines give men and women leisure to form Art Leagues, study for Ph.D.'s, and take their children to Europe, instead of baking and sewing, chopping wood, and plowing their acres.

Gaining Time

What do time and machines and slavery have to do with each other? To begin with, a slave's time is not his own. And it is machines that free man from bondage to time. There is a miracle here, if we could only appreciate it.

A famous visitor from the USSR a few years ago was puzzled at the sight of America's richest farming lands. "Where are all the workers?" he asked.

Most of the workers — and the horses as well — were reflected in the horsepower that ran tractors, combines, and harvesting ma-

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chines. In his country it takes one of every two workers to produce food for the rest, and not much of it at that. In the USA only one out of ten work to produce more than enough food. What an incredible amount of time to do other things we are given by farm machinery alone!

That visitor from the USSR was Mr. Khrushchev, who perhaps has come to see the vital link between capital goods and time, between time-saving and progress. *East Europe* magazine of November 1963 quotes him to the effect that trading with the West can provide the USSR with "quicker fulfillment of its program for the construction of new chemical enterprises *without wasting time* on creation of plans and mastering of the production of new types of equipment." (Italics added.)

"Time is omnipresent in human action as a means that must be economized," Murray Rothbard tells us in *Man, Economy and State* (p. 11). Capital goods are those on which man has expended his labor and his time. Raw materials can be turned into capital goods, that is, made more useful to man, in less time by the use of machines. *That means there is more for everyone sooner, even for those who have no capital, savings, tools, or raw materials themselves!*

We all have a more abundant life to the extent that we are freed from bondage to time. Machines help us do this; so it is vital for future progress, whether at material or spiritual levels, to understand how we bring these helps into being. The people of underdeveloped countries would like to make the magic operate there too.

The principle is simple: men who have hope of bettering their condition bring this progress into being. When men feel secure in their honestly gained property, they save money or goods or materials that are then combined to form new capital goods – things which never existed before.

These daily miracles of transformation come about when men have hope of a greater profit in the future than they would obtain by spending in the present. Without this hope, the miracle doesn't happen. And the wider the area of freedom to produce new goods by voluntary cooperation, the more time-creating miracles occur.

Given personal freedom, hope, free exchange in the market place (without threats or subsidies), and security of life and property, men will not then be enslaved by other men. Nor will men be "enslaved by machines." Instead, they will see that machines are indeed "a boon to man." ◈

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WAR

PAUL L. POIROT

ONCE UPON A TIME the people of the United States waged a war on poverty, the success of which has seen no equal.

They didn't call it war on poverty. They said they were trying "to promote the general welfare," and the device they used was a new Constitution for a government of strictly limited powers. The government was to protect life and private property, thus providing the political framework within which all individuals would be free to produce and trade to their hearts' content. If anyone wanted to be richer or poorer than others, that was his choice and his problem; and how well he succeeded depended on how well he pleased his customers. The laws were designed, as best those men knew how, to render justice impartially, neither harassing nor granting special privilege to the rich or the poor, or any class, or any individual. Of course, there were violations of principle, human nature being what it is, but the principles themselves were sound.

Unlike their modern counterparts in the United States, and unlike their eighteenth century contemporaries in France, the early political leaders of the United States did not try to promote the general welfare through deficit financing and continuous inflation. They had suffered through the wild paper money inflation of the Revolutionary War period and concluded that the whole scheme was "not worth a Continental." They took the position that the best way to help a debtor was to let him pay what he owed, thus establishing his credit rating against which he might want to borrow again some other time. They even went so far as to let bankers and borrowers and lenders compete in the money markets, and suffer the consequences of their

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own folly if financial panic ensued.

If a man acted so as to become a failure, he was permitted to fail. If he couldn't make good at farming, there was no federal farm support program to discourage his trying to be useful in some other way. If he lost one job, he was free to seek another, with no powerful labor unions to bid him nay, and no unemployment compensation or state or federal relief programs to encourage him to remain idle. There wasn't even a minimum wage law to tell him at what point he must stop working entirely rather than take a lower wage; no programs inviting or compelling him to retire at age 60 or 65. And if he chose to enter business at his own risk and responsibility, there was no federal Small Business Administration (with 3,400 employees) to help him remain a small businessman.

Perhaps most important of all was a reluctance on the part of many of the early statesmen of America to seek political office and political power. They knew of other ways to find happiness and achieve success. George Washington wanted to return to farming at Mount Vernon; Jefferson longed to be back at Monticello. Neither the governors nor the governed looked to the government as the source and provider of all good things. The government was a police force of limited power for a limited purpose; and most of life was to be found and lived in peaceful and creative ways outside the scope of governmental control.

Situation Vastly Improved

It would be a gross distortion of the fact to presume that poverty was eliminated from the United States in an absolute sense under the comparatively free-market and limited-government practices of the nineteenth century, or to assert that there were not governmental interferences in the private sphere. Throughout the period, there were many individuals and families in the nation with earnings and savings well below a level they themselves might have considered necessary for a decent standard of living. All that one may conclude, without fear of reasonable contradiction, is that Americans prospered under those conditions to a greater extent than had the people of any other society at any time. If they knew that among them lived "a lower third," it was not cause for panic. Competitive private enterprise kept open the market paths through which anyone could, and most everyone did, find ways to help himself by serving others. And the basic economic theory behind this miracle of progress was: *those who produce more will have more.*

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One of the characteristics of human nature is an insatiable desire for more – materially, intellectually, spiritually. The more a person understands, the more inquisitive he tends to be. The more he sees, the more he wants. The more he has, the more acquisitive he becomes. Now, the fact that individuals are forever wanting more and tend to act so as to fulfill their most urgent wants largely accounts for the miracle of the free market, the fabulous outpouring of goods and services through competitive private enterprise and voluntary exchange.

The Marxist View

A superficial view of this human tendency to be dissatisfied led Karl Marx and many others to reject the market economy with its emphasis on production. A more satisfactory formula, they have presumed, is that "those who want more should have more." The problem of production has been solved, the modern Marxists contend, and their "multiplier" formula stresses the speed of spending; if each spends his income and savings fast enough, everyone will have more to spend.

This consumer doctrine or purchasing power theory of prosperity has tremendous appeal to human beings who always want more. But it presumes too much. The problem of production has not been solved. There is no endless free supply of the goods and services consumers want. Unless there is some incentive to save and invest in creative business enterprises, all the spending in the world will not promote further productive effort. In short order, all available goods and services will have been consumed if nothing is done to replenish their supply. It is not spending or consuming, but productive effort only, that begets production!

An individual surely must realize that he cannot spend himself rich, if all he does is spend. Nor can two individuals spend each other rich if all they do is trade back and forth what they already have on hand. Nor can any number of individuals long subsist if all they do is trade among themselves what remains of a nonreplenished, initial supply of goods and services.

Monetary transactions tend to obscure some of these most elementary facts of life. In an industrialized market economy money enters into most trades, serving as a medium of exchange, a convenient measure of exchange rates or prices which guide buyers and sellers in their further activities as consumers and as producers. Among these market prices are wage rates for services rendered,

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and interest rates for savings loaned and invested.

The Market Phenomenon

In a freely functioning market economy, prices, wages, and interest rates guide and encourage production for the purpose of satisfying consumer wants; and this occurs so automatically that many consumers spend their dollars without even thinking of the creative efforts that had to be called forth in some manner before those dollars would be worth anything. Failing to understand the market, political planners assume that the whole process of production and exchange might be stimulated to function even better if only the government will create additional money and put it into the hands of consumers. These planners fail to see that money's only purpose, as a medium of exchange, tends to be defeated by such arbitrary tampering with the supply. This inflationary tampering distorts prices and wages and interest rates on which economic calculations are based. It encourages consumption and spending but it discourages saving and lending, weakening the incentive and capacity to produce.

This is why the current political war on poverty is doomed to fail. If the government continues to subsidize the poor at the expense of all taxpayers, the result will be an increase in the number of those being subsidized – more poor taxpayers. If the power of the government is invoked to favor debtors at the expense of creditors, more persons will try to borrow but fewer will be willing to lend. If savings are to be systematically plundered through inflation, the thrifty will learn to be spendthrifts, too.

The poor always will be able to obtain in the open competition of the market more of the life-sustaining and life-enriching goods and services they want than can be had through political warfare against successful private enterprise. The market leaves the planning and managing to those who continuously prove their ability, whereas political class warfare tends to redistribute resources among those most likely to waste them.

When government becomes the guarantor of "freedom from want," this means that the poorest managers within the society have been put in charge of human affairs; for they always do and always will outnumber those of superior talent. What is now advertised as a war on poverty is really a confiscation of the fruits of production; and the consequence has to be disastrous for everyone, especially for the poor. ◈

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FREE TRADE: Domestic Foreign

DEAN RUSSELL

THE MOST persuasive argument I ever heard for protective tariffs was offered by an Egyptian student. He pointed out correctly that the low production of the Egyptian workers is due primarily to their primitive tools. He informed me that (contrary to general belief) the low production standards in Egypt actually result in high labor costs when measured on a realistic *per unit produced* basis. He then argued that the workers in the underdeveloped nations just couldn't possibly compete against industrial workers with their efficient machines and the resulting high production and *low labor cost per unit*. And he concluded that if the government didn't protect the low-paid Egyptian workers against competition from the more advanced industrial nations, most of them would soon lose their jobs to the high-paid men with the machines.

Actually, my Egyptian friend's argument for protection against so-called *expensive* foreign labor is not any more valid than are the arguments by my own countrymen for protection against so-called *cheap* foreign labor. In reality, the *trade itself* necessarily causes real wages to rise in all nations that participate. In order to understand this better, let us start with a statement that is not subject to argument: No person in Egypt or Guatemala or the United States will voluntarily trade with a person in another country (or even next door) unless he puts a higher value on what he gets than on what he gives up. And thus both parties to *any* trade (domestic

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or foreign) necessarily benefit (or at least expect to benefit) from the trade.

Actually, there is no exclusively economic or theoretical justification for discussing domestic and foreign trade separately; they are identical in all respects – except for the purely arbitrary and artificial interventions of government. For example, in the United States, a manufacturer in southern California has no particular difficulties in trading with a company in northern Maine, some 4,000 miles away. But when the same manufacturer tries to trade with a company in Tijuana, Mexico – perhaps 4 miles away – he encounters all sorts of frustrating and noneconomic prohibitions and compulsions that have been devised by the two governments.

The problems of transportation and distance (as such) are not something peculiar to international trade. Nor do differences of language and religion constitute special problems in trading across national boundaries.

For example, a Catholic manufacturer who speaks only Italian in Lugano, Switzerland, has no problem at all in trading with a Protestant retailer who speaks only German in Zurich. But when he attempts to trade with his Italian cousin just across the border (both speaking the same language and belonging to the same church), he encounters problems that are often insurmountable. All of these problems are, without exception, created by government and are thus completely artificial and unnecessary.

Canada offers an example of how vast distances, different wage scales, different languages, different religions, and different racial and cultural backgrounds present no real trade problems at all. But let a Canadian try to buy an automobile from Detroit, just across the border!

Even different moneys (lira, peso, dollar, or whatever) present no real problem to any trader – if the various moneys can be freely bought and sold. But when this is forbidden, problems do appear; again, however, they are artificial problems and are due entirely to governmental rules and regulations.

At Home and Abroad

Any argument for free trade and the division of labor within a nation is automatically and necessarily an argument for free trade and the division of labor internationally. If a person advocates free trade domestically, he cannot logically advocate protective tariffs and other similar measures that prevent goods and services from moving freely

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across national boundaries. It is simply not true that a nation and a people are made more prosperous by compelling themselves to pay two and three times as much as they need to pay for the goods and services they want. It just does not make sense to improve the means of moving goods from one nation to another, and then to cancel out the savings in transportation costs by passing laws to hamper the resulting trade. I am convinced that such contradictions arise more from lack of understanding than from evil intentions.

For example, the idea of creating and protecting domestic industries and jobs by restricting foreign imports is still generally found at the bottom of most arguments for protective tariffs. This objective is at least understandable. And it *is* unquestionably true that if it were not for government protection against foreign competition, many persons in Guatemala and the United States would lose their jobs. Further, a considerable number of companies in both nations would be forced out of business and would suffer heavy losses of capital. But the persons who are quick to point out these economic realities seem unaware of the multitude of jobs and industries in Guatemala and the United States that actually depend on foreign trade.

For example, the advocates of protective tariffs in my own country dramatize the story of the jobs and industries that are destroyed or threatened by the $16 billion of yearly imports into the United States. But they just ignore the far larger number of jobs and industries that are involved in our $20 billion of exports — automotive and electrical equipment, steel mill products, machine tools, coal and cotton, petroleum products, and many others. In a manner of speaking, prohibitive tariffs could destroy 20 United States jobs and companies for every 16 saved or created. And worse still, the companies most likely to be injured by restrictive trade policies are our most efficient ones that tend to pay the highest wages. The advocates of protective tariffs completely ignore the obvious fact that foreigners cannot continue to buy from us unless they are permitted to sell to us.

A Huge Market

In reality, the absence of tariffs and similar trade restrictions among the 50 states in my country goes a long way to explain why our level of living is so high. This absence of internal trade restrictions permits and encour-

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ages competition, natural specialization and division of labor, survival of the most efficient managers and companies, and especially the free movement of labor and capital from one industry and one section of the nation to other industries and sections. The final result of all this is better jobs at higher pay for all employees, lower prices for all consumers, and perhaps even higher profits for those owners and managers of capital who are capable of operating in a free and competitive economy.

Just as free trade among the states of the United States has brought this result, just so would free trade among the nations of the world bring similar results to all of them. To help us understand why this is so and how it would work, let us refer briefly to the concept of trade according to the principle of "comparative advantage" as developed by David Ricardo.

This *comparative* advantage idea is often confused with an *absolute* advantage, such as coffee produced in Guatemala but not in the United States. But according to the Ricardian example, two nations must produce the same two (or more) products before this principle applies. And still following Ricardo, the comparison is always first made *within one of the nations alone*. The comparison concerns the "substitution ratio" or "alternate opportunity cost" of producing *domestically* one of the two products instead of the other. Then exactly the same comparison is made *domestically within the other nation.* Whenever the physical cost or substitution ratio for the two products in one country differs from the same cost or substitution ratio for *the same two products* in the other country, a "comparative advantage situation" exists. Each nation can then profit by concentrating on producing one of the products at home and trading a part of it abroad for the other.

Delivering the Paper

Now I am well aware that the above explanation of Ricardo's comparative advantage principle of trade is too condensed and complicated for general lecture purposes. So I will merely refer you to any textbook on international trade for the full development of it. I will here confine myself to applying *the same idea* in more familiar situations and in less technical terms. But even so, the reality behind my examples and conclusions are still Ricardian.

Here is my first example of Ricardo and his comparative ad-

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vantage idea in modern dress: As I write these words, I can see my "newspaper delivery boy" plodding slowly toward my door. He is late as usual. And perhaps the reason I am watching him is to see if he will again step on another one of my prized flowers planted along the sidewalk. Now if you will look upon him and me as representing two nations – and let lecturing and delivering newspapers represent the two products produced in both countries – I can illustrate quite simply the essential idea behind Ricardo's law of comparative advantage.

Positively and beyond any shadow of a doubt, I can deliver newspapers more efficiently than my paper boy can. Since I can deliver more of them in a given period of time, I can earn more money than he can. And since I would be much neater and much more pleasant while doing the job, doubtless the traditional "tips" would be larger for me than they are for him. In short, the market would pay me more to do that delivery job than it now pays him.

I'll also hazard the guess that I can make better speeches than my paper boy can. I know, however, that he *can* make speeches; in fact, he made a couple of them to me when I recently suggested that he should not leave my paper on the open porch during a rain storm. Thus, I will here maintain that I can do both of these jobs better than he can; I have an *absolute* advantage over him in delivering lectures *and* in delivering newspapers. Even so (and to get at Ricardo's point), he has a *comparative* advantage over me in delivering newspapers. And based on what the market will pay me to deliver newspapers and to make lectures, I have a comparative advantage over him in the speech-making business. Here is how it works.

The Scope of the Handicap

Let's say the market pays my paper boy 50 cents an hour to deliver papers. My guess is that he would earn almost nothing as a speech-maker, but let's be generous and allow 5 cents an hour. To follow Ricardo, his substitution ratio is 50 to 5 or 10 to 1. That is, in the same amount of time, he can earn 10 times as much delivering newspapers as he can earn by making speeches.

I am confident that the market will pay me better for both jobs. Let's say I could earn $1 per hour delivering newspapers, and $20 an hour as a lecturer. Thus, for every hour that I spend delivering newspapers for $1, the alternate opportunity cost to me is the $20 I could earn as a lecturer and teacher. Thus, it clearly pays me

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to devote my full working time to lecturing, teaching, and writing instead of delivering papers. Even though I can do a better job than my "competitor" in delivering newspapers, he still has a comparative advantage over me; or, technically, his comparative *disadvantage* is less in delivering papers than in delivering lectures. The fact that I have an *absolute* advantage in both categories is of no consequence. As the Ricardian principle illustrates, I will continue to pay my so-so paper boy to deliver my newspaper because (comparatively) my advantage over him is far greater in lecturing than in delivering papers.

It Still Pays To Trade

And so it is with trade between nations. As Ricardo pointed out, one nation can be more efficient in *every* category than another nation—and yet because of a comparative advantage, it is still profitable for the more efficient nation to trade with the less efficient nation. But how does one discover these comparative advantages among the various nations in today's world?

Well, first, it is necessary that you and I and everyone else can freely buy and sell and exchange the moneys of the two nations being compared. For when free exchange is permitted, then prices and wage rates in the two nations will tend to be based on reality instead of wishful thinking. And when trade is based on reality, *comparative* advantages are not hard to find. Select two jobs or two products that exist in both nations. Now examine the wage rates and prices paid in one of the nations for the jobs or products. Now compare the wages and prices for the *same* jobs and products in the other nation.

Unless the comparative substitution ratios are identical (highly unlikely), trade will occur between the two nations. Each nation will concentrate on the production of the item in which it has the greatest comparative advantage (or the least comparative disadvantage). Both nations will profit from this trade, even when one of them has an absolute advantage in producing both products.

Abundant Supply of Labor

Comparative advantages can be found in general categories as well as in specific products and services. For example, I am confident that, *compared to the United States,* the cost of capital is higher than the cost of labor here in Guatemala. If so, the United States enjoys a comparative advantage over Guatemala in capital costs, and Guatemala en-

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joys a comparative advantage over the United States in labor costs.

Given this situation, one would logically expect "labor intensive" products to go from Guatemala to the United States, and "capital intensive" products to flow from the United States to Guatemala. And I am confident that such would be the case, if our two governments would abolish the trade restrictions that each has placed against the other. If this were done, both nations would necessarily profit thereby.

Again, this comparative advantage *principle* works the same between persons within a nation as it does between nations. For example, the famous showman, Billy Rose, was also a champion typist. But he operated on the principle of comparative advantage when he hired a typist and devoted his own time to producing shows and writing newspaper columns. The fact that he could type faster and better than his secretary is beside the point. Both he and she enjoyed a higher level of living because of that division of labor, just as the level of living in any and all nations rises when trade is permitted to operate according to this principle.

Likewise, a surgeon may know how to wash his surgical instruments better than does the person he actually hires to wash them. But obviously, *everyone* profits by his decision to devote his full time to the job (surgery) at which he enjoys the greatest *comparative* advantage, as measured by the price the market will pay him for performing the two tasks.

As another familiar example of how Ricardo's comparative advantage idea works in everyday life, take the insurance salesman who pays a man $1.50 an hour to work for him in his yard during the day. Let's assume that the caliber of the work done by the yardman is not as good as the owner himself could do – or, at any rate, *thinks* he could do. So why doesn't he do the work himself and save $1.50 an hour? The answer is that he would not necessarily save $1.50 an hour but might actually lose $3.50 an hour by working in his own yard. That development is due to the fact that his average hourly earnings as an insurance salesman are $5. He has a *comparative* advantage selling insurance instead of raking leaves. The pricing mechanism of the free market shows this beyond any shadow of a doubt.

And so it is with trade among nations. Every nation enjoys a comparative advantage in some product or service, even though

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it may be due only to some institutional or historical reason. That nation (and the people in general in that nation) would enjoy a higher level of living if it specialized in those goods and services in which it enjoys such an advantage.

Let the Market Decide

How can we citizens of Guatemala and the United States discover which are the products and services in which each enjoys a comparative advantage? Easy! Just remove all artificial restrictions against trade, including monetary exchange. Then observe what the importers and exporters in Guatemala do. I doubt that many of them can explain to you Ricardo's comparative advantage principle, but every one of them will search the world's markets to see what and where he can buy most advantageously. Nor do any of them need to hear this lecture in order to know where in the world the most profitable demand exists for Guatemalan products and services. While the producers and buyers in Guatemala and the United States may not be able to explain the Ricardian theory on which they operate, they will still quickly indicate to us which products and services enjoy a comparative advantage in which nation. You and I need only follow the free market price signals in our buying and selling

We are foolish indeed to continue to impose tariffs and other restrictions against trade between our nations; the only result of such misguided and uneconomic governmental interventions is that we pay more and get less. ◈

IDEAS ON LIBERTY

Consumer Sovereignty

IF AN EMPLOYEE asks for a raise because his wife has borne him a new baby and the employer refuses on the ground that the infant does not contribute to the factory's effort, the employer acts as the mandatary of the consumers. These consumers are not prepared to pay more for any commodity merely because the worker has a large family.

LUDWIG VON MISES, *Human Action*

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THE LAND OF FREE CHOICE

CHARLES S. ROBERTS

THE LAND OF THE FREE gained its glorious and enviable reputation through the principles of individual liberty and freedom of choice that were stated in the Declaration of Independence and guaranteed by the Constitution and its amendments.

Until March 12, 1945, when the New York State legislature enacted the first so-called antidiscrimination law, no one in this country seriously questioned the right of every citizen in it to make his own choices freely and independently regarding his own business or property, so long as the choice did not infringe on the rights of others.

Under the provisions of the New York State antidiscrimination law an employer is denied the right to choose his employees freely. It states that an employer may not discriminate against an applicant for a job because of race, color, religion, or place of national origin.

It is termed a law against discrimination; but it is patently a law against freedom of choice because choice and discrimination are inseparably one and the same thing, each being one side of the same coin. One cannot arrive at a choice without discriminating. For example, when a shopper buys a package of AB coffee, she has thereby discriminated against XY and all of the other brands on the shelf.

Every act of selecting is at the same time a process of discriminating. When an employer selects an applicant for a job, he has necessarily discriminated against all the other applicants, whatever their race or other classification may be. For instance, if there are five white men applying for the same job, when the employer makes his selection he has unavoidably discriminated against the other four. Those who

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are left out have no recourse, and there is nothing more the employer can do about it, whatever his wishes may be.

However, under the practical workings of the antidiscrimination laws, an employer may not make a free selection if one or more of the applicants are of a race or religion other than his own. An employer may discriminate against members of his own race or religion with impunity, and he often is compelled to do so; but if he fails to employ members of other races and minority groups, he runs the risk of being summoned before a commission and penalized.

It Can Only Transfer a Job from One Person to Another

Even a superficial analysis of this legislation will show that the only end it can accomplish is to transfer a job from one person to another, from one of the employer's choice to one who is not his choice. These minority-group members have therefore been moved up into a preferred position over the majority-group applicant. It is a one-way operation with all of the transferring being made *to* the minority groups, never *away* from them.

In each case in which an employer has been forced by a so-called antidiscrimination law to give a job to a Negro, Cuban, or Puerto Rican, he has been forced to sidetrack a white man or someone else of his own free choice. Such a result of the practical workings of this law brings us to the inescapable conclusion that it should be labeled an antichoice law instead of an antidiscrimination law.

When in March, 1945, the first antidiscrimination law was signed by Governor Dewey of New York, there were employed by the various parishes, schools, hospitals, nursing homes, and administrative departments of the Catholic Archdiocese of New York approximately 14,000 people, not including the clergy. All but a small fraction of 1 per cent of these people were Catholic, and why not? If there had been ten times as many employees, the various departments, which were paying their wages, would have possessed the right to make the groups unanimously Catholic, just as it is the inherent right of every private employer to maintain any kind of unanimity he chooses.

It is not only the right but the duty of an employer to set up and maintain an harmonious organization. A part of the basis on which an employee is selected is his ability to fit into an organization. And who should be the judge? The employer.

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Bowing to Pressure

The antidiscrimination or anti-choice laws were enacted in the various states without the vote or consent of the citizens. The lawmakers gave in to the campaigns of pressure groups. This brazen injustice is threaded with an irony that seems to have gone almost unnoticed by the public, as well as by most of its victims. Political employers openly discriminate on a wholesale scale by giving out almost all of the available government jobs to members of their own political party.

For instance, it is estimated that Presidents Kennedy and Johnson gave to Democrats more than 99 per cent of the appointments which they made to key posts in the federal government, thereby discriminating against the color of the political badge the Republicans were wearing. Who would deny the presidents a free hand in choosing their aides? No one, perhaps, except those who would deny a private employer a free hand in selecting his helpers.

In the scheme of government affairs, the government official, unfortunately, has been given the right to fill the jobs in his department with the faithful of his political party, almost without regard to merit. Without question, the private employer should be free to fill the jobs for which he is paying the wages and salaries with the workers he feels will serve him best, and he must select them on merit if his organization is to prosper and grow, or even survive.

These laws against free choice in employment not only fail to create jobs, but inevitably they cause unemployment. Quite naturally, employers are reluctant to take on employees when they cannot freely choose them. Instead, they make out with fewer employees.

There are at present several million unemployed white men and women in the United States. An unknown but sizable number of them are unemployed because potential employers were forbidden to assign jobs to them. There were applications for those jobs from members of the minority groups, and in order not to "discriminate" against them, the employers were forced to discriminate instead against applicants of their own choosing and send them off to join the growing ranks of the unemployed.

Thus, a law, which its proponents claim bars discrimination, creates discrimination in every case it enters. It forces the shifting of jobs among applicants, and in so doing stirs up dissatisfaction and intensifies prejudice.

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Clearly, such a law cannot create employment.

Presumed Guilty

Among the provisions of these antichoice laws, the one which most flagrantly violates our tradition of freedom and fair play is that which holds the defendant employer guilty until he proves himself innocent. When an employer fails to employ a minority-group member in a particular case, or consistently fails to employ members of that group, even though in his judgment these applicants do not qualify for the jobs that are open, the commission against discrimination may find him guilty and force him to give jobs to the complaining applicants with back pay.

More than that, section 297 of the New York statute states that "the commission shall not be bound by the strict rules of evidence prevailing in the courts of law or equity." Thus we are all equal before the law unless we are employers. However, regardless of its individual provisions, the intent of the whole law flagrantly violates our cherished tradition of freedom of choice.

If there are two or more applicants for a job, the employer is the only one who is qualified to make the selection, and he is the only one who has the right to make it, whatever his reasons; and because he is the owner of the job in the first place, no commission has any moral or ethical right to demand that he justify his choice. The responsibility for the success of an organization rests on the shoulders of management; consequently management must retain the full authority that goes with that responsibility.

Every casting director in the theater emphasizes that he needs to audition a number of applicants for every part in a play in order to select the one he feels is right for the part. Every employer is a casting director. Only he is qualified to decide which applicant is right for any place he may have open. Only one person is needed to fill the job. It will be filled either by one of the employer's choice or by one who is moved into it by an antichoice or FEPC law. In The American Way of Life, which should it be?

The trend of this antichoice legislation could be extended by only a few degrees to apply to the individual's choice of his doctor, his lawyer, or his architect. A member of one of these professions retained by the individual is no less his employee, during the time he is serving, than any other employee.

It should be crystal clear to anyone who will analyze this sub-

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ject that there is no such thing as forbidding discrimination by law. The so-called FEPC laws can only forbid freedom of choice.

It has been advocated by some writers and politicians that the employers of this country give a *certain percentage* or *certain number* of their available jobs to Negroes and other ethnic groups. Overlooked is the fact that this idea could be carried out only by disemploying the same percentage or same number of white men and women.

Job Opportunities

On a visit to any of the large department stores in New York City today one will see Puerto Rican and Negro women installed as sales women in almost every department and in clerical positions in the offices. The same number of white women who would have occupied those posts are now displaced persons. In effect, they were kept out of those jobs because of the color of their skin, or the lack of it.

If an accurate census could be taken of the number of the minority-group members who are now holding jobs that were not given to them voluntarily, it would show the number of white men and women who are now unemployed because of the antichoice or FEPC laws.

There are a number of measures the government could take or abandon that would stimulate business activity and consequently create jobs. They are being expounded constantly by outstanding businessmen and economists, but one certain way that jobs cannot be created is by turning away one group of people to make way for other groups. This maneuver reduces efficiency and creates friction, and it does not bring one single net addition to the nation's total employment.

Civil Rights

Political, religious, and civic leaders have recently attempted to include private jobs in their demands for civil rights for minority groups. By no stretch of the definition of the word *civil* could it be made to mean a peremptory right to a private job.

Both white people and Negroes may vote in the same elections, use the same transportation and other public facilities, and go to the same schools and churches. Such use and attendance by one group does not preclude the use and attendance by the other group; but a white man and a Negro cannot hold the same job at the same time. More than that, *no one has a civil right to a private job.*

New York City's religious lead-

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ers recently were urged to join in boycotts and use other means of coercion to force "equal employment opportunities" for Negroes and Latin Americans. They were petitioned specifically to bring their collective pressure on the management of the The Americana Hotel, where their conference on religion and race was being held, to start drawing up a timetable for the opening up of supervisory positions for Negroes and Latin Americans.

The management of The Americana might well have replied to these leaders, "If we give the jobs to the people of your choosing, we shall be compelled to discharge or reject the same number of people of our own choosing. Commendable as your motives may be, *you cannot gain an altruistic end through coercion.*"

Some people who have not examined these conditions closely have asked, "If we do not have laws against discrimination in employment, where will those people of the minorities find jobs?" Before this question can be answered, another must be asked, "If we have laws that force the transfer of jobs to the minority groups, where will the displaced persons find jobs?"

And perhaps the final question should be: "If there is a law against discrimination, would that law also serve to punish white employees who work exclusively for white employers, or Negro employees willing to work only for white employers, or Chinese employees in an all-Chinese restaurant or laundry?" ◈

IDEAS ON LIBERTY

Brotherhood

IN A MATERIALISTIC SOCIETY which denies the existence and authority of God, the appeal for human brotherhood is a curious contradiction in terms. The battle cry of the French Revolution for "liberty, equality, and fraternity" was thus shrewd but none the less deliberate demagoguery on the part of its socialist leaders. The slogan was calculated merely to capitalize upon the misery of the poor and set them apart as "a class" against the hated "Aristocracy."

In the ensuing terror of the class warfare which these revolutionary leaders generated, "Liberty, Equality, and Fraternity" were conspicuous by their complete absence.

CLARENCE MANION, *The Key to Peace*

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The State of the UNIONS

IF YOU ASK a modern "liberal" to define the duty of Congress, he will in all probability tell you that it is to pass a certain quota of new legislation each session as demanded by the President in his annual State of the Union message. But the burden of three new books on labor – *Union Monopolies and Antitrust Restraints* by Patrick M. Boarman (Labor Policy Association, $5), *What's Wrong With Our Labor Unions?* by Maurice R. Franks (Bobbs-Merrill, $5), and *Fringe Benefits: The Golden Chains* by Alex Rubner (Putnam, 25s.) – is that we have had far too much legislation over the past three decades, particularly in regard to labor union protection.

The three authors have professedly different ends in view, but they agree among themselves in calling for a restoration of simplicity to the tangled field of labor relations. Professor Boarman thinks the "union monopoly" problem would tend to disappear if the laws which exempt labor from the provisions of the Sherman Antitrust Act were to be amended or canceled. Mr. Franks, a former union organizer, puts his hopes in the restoration of voluntary unionism, which would enable union members to ride herd on their leaders instead of vice versa. As for Alex Rubner, he thinks that the way to freedom lies in giving people total command of their own money aside from the small portion they are willing to grant the state to carry on ordinary military, police, and limited residual welfare duties.

All three of the authors have little patience with the modern "liberal" consensus that labor is still an underdog. The most deliberately shocking is Mr. Rubner, who thinks that workers are perfectly able to take care of themselves without being wrapped in any cotton batting. Paying a man a "fringe benefit" is just as insulting to his dignity as was the old-time practice of paying

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him with a draft on the company store. In the old days, says Mr. Rubner, we had the "truck system" and the "company town"; today the worker has permitted "fringes" to assume "such dimensions that they are now between one-quarter and one-half of the money wage." To pay a man in a "fringe benefit," so Mr. Rubner insists, presumes that he has less than human capacity to add and substract and make judgments.

Mr. Rubner recalls that the "model town of Pullman," near Chicago, was scathingly described by a pro-labor critic of the eighteen nineties as "a gilded cage that imprisoned the manhood of its citizens." But the motives of Mr. Pullman, who wanted to ensure that "no brothels and drinking dens" would be close to the abodes of his employees, did not differ from the motives of that modern Texas personnel director who argues that payment in fringe benefits is good because his workers, "principally Latin American and Negro," don't know how to budget properly. "The company," so this personnel director is quoted as saying, "can do more for them by giving them better benefits than through higher wages."

The movement toward paying men in fringe benefits derives partly from the paternalism of modern personnel thinking, partly from a desire to avoid the expenses of labor turnover, and partly from our complex tax laws, which encourage both management and labor to find ways of rewarding people without letting the tax collector skim the cream of anything "extra." Then, too, there had to be some way of circumventing the intention of wartime wage freezes if production incentives were to be retained, so the fringe benefit had a hardy growth in the 1939-45 period in both Europe and America. To Mr. Rubner's way of thinking, none of these reasons for paying in fringes instead of cash is a good reason. It would be better to change the tax laws, making the income tax less steeply progressive. With their "manhood restored," workers would be forced to do some thinking for themselves about old-age insurance, joining voluntary hospitalization plans, and planning their own vacations.

Economically and Morally Sound

The abolition of the fancy modern "truck system," says Mr. Rubner, would have good economic effects as well as good moral effects. Private insurance companies are likely to invest their money more productively than pension fund guardians; men and

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materials that are now tied up in the administration of fringes would be released for other uses; and people would be less apt to think themselves sick on Monday morning just because the weekend has been arduous and thus deserving of extension through sick-leave. Moreover, if men were to be paid once again in money, the more scrupulous employees would not be forced to carry the less scrupulous by paying for their insurance. As F. A. Harper once said, one man's fringe benefit is another man's fringe detriment, depending on who is in position to collect it.

Maurice Franks agrees with Mr. Rubner that it is an insult to man's dignity to compel him to do things which he is perfectly able to decide upon for himself. He objects to the type of thinking that, likening dues to taxes, stresses the analogy between citizenship in a union and citizenship in a state. If such an analogy holds, the union would have the right to establish police and court functions as well as its right to collect taxes. Well, how do you like to think of Jimmy Hoffa as judge and cop?

"Free Coercion"

Every time a union leader refers to a nonunion man as a free rider or free loader, says Mr. Franks, that leader tips his hand as a totalitarian who considers that he has a right to force his own conception of welfare on everybody else. He has also lost track of the reality of democratic civil society, in which a man is free to belong to any one of a number of political parties which, in turn, get representation in a parliament. Labor unions, it hardly needs to be said, don't have parliaments. A union is simply an agency designed to carry out bargaining functions for those who feel they have need of an agent. It can also be a social club. If a man doesn't want a social club or an agent, it hardly makes him a free loader or a free rider.

In a brilliant passage Mr. Franks defends voluntarism by singling out associations that wouldn't dream of trying to transform their dues into compulsory taxes. "A physician," he says, "is not compelled to belong to a medical association in order to practice medicine . . . . A lawyer does not have to belong to a bar association in order to handle cases, and no citizen – however much he might profit from it – must of necessity consult an attorney or engage paid counsel beyond the point of personal desire or preference. No man is compelled to own a single share of stock . . . no manufacturer is forced to be-

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long to any association or contribute to the support of any chamber of commerce. No church has the power to coerce any believer into joining its congregation or paying pew rent into its coffers. No United Fund . . . is equipped with powers to commandeer a single contribution, no matter how many 'free riders' may profit from public undertakings of the various organizations supported by its drive . . . ."

Yet union leaders wish the legal power to "man-herd" all workers into their organizations! The worst of it is, they have this power in thirty-odd "sovereign" states of the union.

Professor Boarman is less emotive than Mr. Franks in his approach to the theme of union monopoly. And he is less deliberately shocking than Mr. Rubner. But in his careful economist's language he is no less devastating. His message is that the big "countervailing" union, by virtue of its legally entrenched position, is able to push wages above the market in its own segment of the economy. The result is unemployment and stagnation elsewhere. Incidentally, Professor Boarman thinks that unions have quite legitimate functions, one of which is to "cause subcompetitive wages to be raised to competitive levels." But the union must not be endowed with legal exemption from the antitrust laws lest it lose its own competitive excuse for being.

IDEAS ON LIBERTY

The Propriety of Property

TO EVERY INDIVIDUAL in nature is given an individual property by nature, not to be invaded or usurped by any: for every one as he is himselfe, so he hath a selfe propriety, else he could not be himselfe. . . . Mine and thine cannot be, except this be: No man hath power over my rights and liberties and I over no man's; I may be but an individual, enjoy myselfe and my selfe propriety.

RICHARD OVERTON
From *An Arrow Against All Tyrants and Tyranny Shot from the Prison of Newgate* (1646)

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SUGGESTED READINGS ON

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*Clichés of Socialism — suggested answers.

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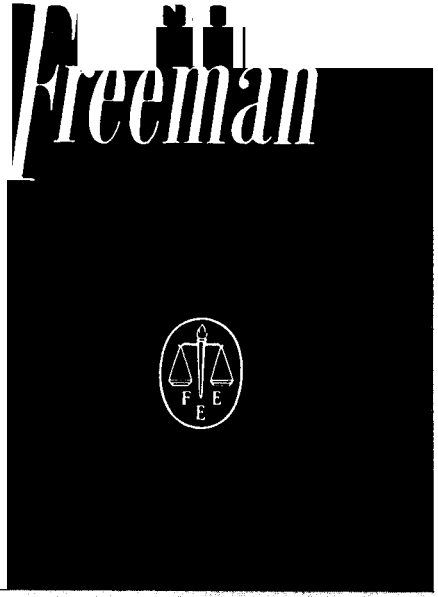

ONE'S OWN TASKMASTER

■ If any man consider the present aspects of what is called by distinction **society**, he will see the need of these ethics [of self-reliance]. The sinew and heart of man seem to be drawn out, and we are become timorous desponding whimperers. We are afraid of truth, afraid of fortune, afraid of death, and afraid of each other. Our age yields no great and perfect persons. We want men and women who shall renovate life and our social state, but we see that most natures are insolvent, cannot satisfy their own wants, have an ambition out of all proportion to their practical force, and so do lean and beg day and night continually. Our housekeeping is mendicant, our arts, our occupations, our marriages, our religion we have not chosen, but society has chosen for us. We are parlor soldiers. The rugged battle of fate, where strength is born, we shun.

RALPH WALDO EMERSON, Self-Reliance

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